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Jury Trial

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

S1 22 CR 644 (JSR)

5 STEVEN PEREZ, A/K/A "LUCHA",

6 Defendant.

7 -----x

8 New York, N.Y.
9 August 28, 2023
9:30 a.m.

10 Before:

11 HON. JED S. RAKOFF,

12 District Judge

13
14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
17 Southern District of New York

ASHLEY NICHOLAS

17 MADISON SMYSER

SARAH MORTAZAVI

18 Assistant United States Attorneys

19 FEDERAL DEFENDERS OF NEW YORK

Attorneys for Defendant Perez

20 ZAWADI BAHARANYI

AMANDA MAYO

21 ALSO PRESENT: ANANYA SANKAR, Paralegal, U.S. Attorney's Office

22 ARJUN AHUJA, Paralegal, U.S. Attorney's Office

23 SARAH KWON, Paralegal, Federal Defenders of New York

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1 (Case called)

2 MS. NICHOLAS: Ashley Nicholas, Madison Smyser and
3 Sarah Mortazavi for the government, joined at counsel table by
4 paralegal specialist Arjun Ahuja.

5 THE COURT: So, the FBI has nothing but special agents
6 and I'm glad to know that U.S. Attorney's Office has nothing
7 but paralegal specialists. Some day I'll be a paralegal
8 generalist but probably not in my life time.

9 MS. BAHARANYI: Good morning, your Honor.

10 Zawadi Baharanyi, on behalf of Lucha El Por Libertad.
11 I am also joined by our paralegal specialist Sarah Kwon.

12 THE COURT: Let me have my law clerk hand to each side
13 a copy of my preliminary instructions. Thank you to both sides
14 for submitting your proposed instructions. Take a look at this
15 because we will want to read it to the jury before opening
16 statements.

17 Second, my law clerk tells me we've not yet received
18 from the parties the list of persons, witnesses and others who
19 we need for the voir dire.

20 MS. NICHOLAS: We're handing up that hard copy now,
21 your Honor.

22 THE COURT: Very good. And from the defense?

23 MS. BAHARANYI: Your Honor, I am checking in our
24 proposed voir dire, I think we included our names in those
25 questions but what we can do is coordinate with the government

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1 to make sure you have a complete list.

2 THE COURT: Let me take a look at your voir dire.

3 (Pause)

4 THE COURT: I don't see it in the defense voir dire.

5 Do you have a copy of your voir dire?

6 MS. BAHARANYI: Your Honor, I do. And it lists our
7 names. So, names of the parties. There's only one additional
8 name. So if I may, your Honor, I might write that name on this
9 voir dire copy and pass it up to the Court.

10 THE COURT: Well, just give me the name.

11 MS. BAHARANYI: The first name is Maria --

12 THE COURT: Okay. Hold on.

13 MS. BAHARANYI: Last name is O-t-e-r-o.

14 THE COURT: Otero.

15 MS. BAHARANYI: The other names are just our names,
16 your Honor.

17 THE COURT: So, I'm not talking about lawyers' names.
18 I'm talking about -- and I'm not talking about the parties
19 names. I am talking about the names of persons who either will
20 be witnesses or whose names are likely to come up in the course
21 of the testimony.

22 MS. BAHARANYI: Understood. That's all, your Honor.

23 THE COURT: All right. Very good.

24 All right. Anything else we need to take up right
25 now?

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1 MS. BAHARANYI: Your Honor, while we have you, your
2 Honor, I think there are a couple of issues that we want to
3 raise right now. One with respect to, I think it's, before we
4 get to the point of openings, I can raise that now or after.

5 THE COURT: Go ahead.

6 MS. BAHARANYI: We understand the Court's ruling
7 regarding the Massachusetts case and the preference to proceed
8 sort of case-by-case or evidence-by-evidence. One of our
9 concerns is there is a tremendous amount of potentially
10 prejudice evidence that we don't want mentioned in opening
11 selection before the jury. This includes any reference to
12 armed standoff, any reference to hours long, eight, nine, ten
13 hours-long standoff.

14 THE COURT: I thought I indicated on Friday that while
15 I was going to allow in much of this evidence subject to
16 specific objections when it was offered that the standoff was
17 likely not to be admitted. I am pretty sure that's what I
18 said.

19 MS. BAHARANYI: I heard the "likely not", your Honor.
20 I did want to be clear before we got into openings and the bell
21 was rung --

22 THE COURT: Is the government planning to say anything
23 about the eight-hour standoff in their opening?

24 MS. NICHOLAS: We are going to address the fact of the
25 traffic stop. We don't call it a standoff. We don't mention

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1 the temporal element of it but the facts of the stop are
2 mentioned.

3 THE COURT: Well, that seems to be consistent with
4 what I ruled on Friday. So --

5 MS. BAHARANYI: There was one area that wasn't, I
6 think, addressed explicitly on Friday by the parties, and
7 that's what respect to the other firearms that were found
8 during the Massachusetts stop. I think, as the Court knows,
9 there was only one firearm at that Massachusetts stop that was
10 in any way connected to Vereen, or purchased by the
11 co-defendant Vereen, but there are other eight other firearms
12 that we want to make sure the government doesn't reference in
13 opening because again, it's unrelated to the charge here and it
14 would be highly prejudice for them to open up saying, you are
15 going to hear about all of those other firearms, or things that
16 aren't relevant to the case.

17 THE COURT: Of course the conspiracy does involve
18 other firearms.

19 MS. BAHARANYI: The government's provided us with a
20 fairly clear list of firearms that they believe are related and
21 connected to this conspiracy from the point of the indictment
22 where they listed every firearm, its make, its model and serial
23 number, and only one of those firearms shows up during the
24 Massachusetts stop. The others don't.

25 THE COURT: So I guess the other question is my

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1 understanding of the defense here -- I'll listen carefully to
2 your opening -- is that it's basically a knowledge and intent
3 defense state of mind.

4 MS. BAHARANYI: That is certainly one element, your
5 Honor.

6 THE COURT: What other element? Other than the
7 government has to prove every element beyond a reasonable
8 doubt.

9 MS. BAHARANYI: Of course they've added the conspiracy
10 charge. So, the agreement and existence of an agreement for
11 this conduct. But I think it would be highly prejudicial for
12 the jury to hear about guns that have not been traced to the
13 co-defendant in this case that seem to have no connection to
14 this case, not purchased by Vereen and the guns that, frankly,
15 your Honor, look highly prejudicial as well. There's a great
16 risk that they'll hear this information, hear about these other
17 guns, hear about this stop, hopefully, not a standoff and they
18 convict on that basis instead of relevance to a question of
19 whether the guns were received --

20 THE COURT: Let me hear from the government.

21 MS. SMYSER: Your Honor, Ms. Baharanyi is correct.
22 Those in our view are still evidence of the conspiracy. There
23 are a set of guns that Ms. Baharanyi is referencing that Vereen
24 purchased and that we believe are part of the conspiracy but in
25 addition these other guns he recovered at the Massachusetts

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1 stop. This conspiracy is about receiving and transporting
2 firearms interstate without proper licenses and there's
3 evidence and body worn camera footage that, for example, the
4 defendant and this co-conspirator addressed whether the guns
5 are stolen and whether they're clean. And that indicates that
6 they know the source of the guns, not just the one gun that was
7 recovered from Massachusetts that came from Vereen. We think
8 it's helpful evidence -- show that these men are transporting
9 guns interstate without the proper licenses to do so.

10 THE COURT: Well, just so I'm clear, first of all,
11 what, if anything, is said by the defendant.

12 MS. SMYSER: So, your Honor, in this body cam footage
13 the leader of the group, Jamal Latimer, asks the defendant and
14 one of his co-conspirators named Jamil Bey who also paid -- for
15 the firearms, Are any of those stolen? And the defendant
16 shakes his head and Bey says no. The defendant later comes
17 back and says, These are clean. They're clean.

18 THE COURT: Why does that show anything about the
19 agreement to do something unlawful?

20 MS. SMYSER: Your Honor, this shows that both Mr. Bey
21 and the defendant were involved in getting the firearms that
22 were with them at this stop and we know that they traveled from
23 New York to Rhode Island to Massachusetts. They received
24 firearms in New York, traveled with those to Rhode Island
25 including to meet people who are residents of Rhode Island.

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1 Jamal Latimer -- Cumberlander which in itself is an agreement
2 and violation of 922 (A) (3).

3 THE COURT: Well, that may support your introducing
4 stuff about this situation but I'm still not clear what the
5 specific conversation you just mentioned shows.

6 MS. SMYSER: I think it goes directly to the
7 defendant's knowledge.

8 THE COURT: In what way? He says he's been told that
9 these are not stolen guns.

10 MS. SMYSER: It is a question. Are those stolen? And
11 he shakes his head which indicates his knowledge of where those
12 firearms came from, which is key to put him and Mr. Bey in a
13 conspiracy and to give them knowledge of where those firearms
14 came from. And they're the ones transporting those firearms
15 from their state of residency, New York to Rhode Island, to
16 Massachusetts.

17 THE COURT: And what, if anything, is being said about
18 that conversation on opening statement?

19 MS. SMYSER: One moment, your Honor?

20 THE COURT: Yes.

21 (Pause)

22 MS. SMYSER: Your Honor, we plan to say that there is
23 video capturing the defendant and his coconspirator discussing
24 the guns and where those guns came from.

25 MS. BAHARANYI: Your Honor, that's not a correct

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1 assessment of the evidence or it's quite misleading actually.
2 There is no discussion about where the guns came from. And in
3 fact, what the government's just told you like the inferential
4 steps its asking the Court and the jury to make is exactly what
5 we objected to in our motions in limine. There is so much
6 speculation that is going to be required for them to say that
7 this comment in the middle of this very intense --

8 THE COURT: I think there are two different points
9 here. And not it's not clear to me that the wording in the
10 opening is appropriate and I'll get to that in a minute. But
11 on the more general question of whether circumstantial evidence
12 of your client's knowledge of the location of these guns can be
13 produced, it's a reasonable inference. It's not only possible
14 inference -- and you are free to of course cross-examine, argue
15 to the contrary -- but it's certainly a reasonable inference
16 that if he says none of the guns are stolen, he knows where
17 those guns came from. So I don't think that that should be
18 excluded and I don't see the prejudice at all in making that
19 argument.

20 Now, what is different about the statement in the
21 opening is they say he discussed where the guns come from. I
22 think that is an overstatement from what I just heard. So they
23 would have to change that to something like, they had
24 discussions which you may well find shows that they knew where
25 the guns came from or something along those lines.

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1 But in terms of admissibility, the federal law is
2 clear that under Rules 401, 402 and 403, anything that has any
3 reasonable tendency to advance a circumstantial inference is
4 permissible. 403, of course, deals with prejudice. The
5 prejudice has to be very substantial before otherwise
6 admissible evidence can be excluded. I don't see -- at least
7 not from anything I just heard. So, it will be permitted but
8 with the modification I've just indicated.

9 MS. BAHARANYI: Your Honor, I don't think that --
10 well, we certainly agree that there is actually substantial
11 potential prejudice by allowing the government to make these
12 connections and these speculative leaps.

13 THE COURT: It's all speculation. Unlike state law
14 federal law says circumstantial evidence is just as good as
15 direct evidence and the only question then is whether the
16 inference that is being asked to be drawn is one that is
17 reasonable. And it's certainly reasonable to say that one who
18 says flatout those guns are not stolen could only say that if
19 he knew where the guns were coming from.

20 MS. BAHARANYI: The context of when the statement is
21 given, your Honor, I don't think that's a fair assessment.

22 THE COURT: Well, you can argue that to the jury.

23 MS. BAHARANYI: Returning to the number of guns
24 however, which is when we started this conversation, again, the
25 eight other guns that the government plans to reference are

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1 guns that never, I don't think they're even alleging were
2 bought by co-defendants were in New York City.

3 THE COURT: This is all part of the conspiracy.

4 MS. BAHARANYI: The conspiracy has boundaries, your
5 Honor. This has limits.

6 THE COURT: The conspiracy as I understand it is that
7 your client entered into an arrangement or agreement to traffic
8 guns on an interstate basis without a license and that includes
9 everything I've just heard about this particular situation.

10 MS. BAHARANYI: A conspiracy is about receiving guns
11 into your state of residence. We're talking about guns that
12 are stopped and in Massachusetts and that have no connection to
13 the buyer in this case, Keith Vereen.

14 THE COURT: Well, let's look at the indictment. So
15 Paragraph One of Count One states as follows:

16 "From at least in or about May 2020 through at least
17 in or about July 2021 in the Southern District of New York and
18 elsewhere, Steven Perez, a/k/a "Lucha", the defendant, and
19 others, known and unknown, willfully and knowingly combined,
20 conspired confederate and agreed together and with each other
21 to commit an offense against the United States, to wit,
22 transporting and receiving firearms interstate without the
23 requisite licenses in violation of Title 18 U.S.C. Section 922
24 (A) (3).

25 Why doesn't that cover what we just discussed?

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1 MS. BAHARANYI: While that's perhaps a summary or a
2 title of what they believe that statute is about, in effect --

3 THE COURT: As I checked it was the determination of
4 the grand jury of the United States.

5 MS. BAHARANYI: Well, your Honor, it has to actually
6 fit with the particular law that's being violated and the law
7 is 18 United States 922 (A) (3). And that specific provision
8 that he has been charged with and he has been charged with
9 conspiring to violate isn't about the general interstate
10 transportation of firearms. It's whether someone who was other
11 than a licensed importer, manufacturer, distributor received
12 into or received in a state where he resides firearms that were
13 attained outside of that state. That's what he's been charged
14 with.

15 THE COURT: Let me look at 922 (a)(3). 922 is an
16 interesting statute. It goes on the standard edition of the
17 Criminal Code for six single-spaced pages, showing nothing else
18 Congress believes in a -- approach to drafting. But in any
19 event, let's take a look at it.

20 (Pause)

21 THE COURT: It shall be unlawful for any person other
22 than a licensed importer or licensed manufacturer, a licensed
23 dealer or licensed collector to transport into or receive in
24 the state where he resides or if the person is a corporation or
25 other business, entity of the state where he maintains a place

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1 of business any firearm purchased or otherwise obtained by such
2 person outside that state and under some exceptions.

3 So, why do you think that it says "transport into or
4 receive" that it's limited to received?

5 MS. BAHARANYI: Your Honor, I'm not saying that's it's
6 limited to receiving. It is for the transportation into a
7 person's state of residence or receiving into a person's state
8 of residence. What I'm saying is the conduct in Massachusetts
9 is far removed from what needs to be proven for 922 (a)(3)
10 violation.

11 THE COURT: No, no. The conspiracy as I understand it
12 is there are a group of people who agreed that they without a
13 license would transport on an interstate basis, guns that would
14 ultimately wind up in states other than where they were from
15 originally where they were purchased or whatever. And that was
16 the overall conspiracy and in furtherance of the conspiracy in
17 the second count, brought a gun into New York. I don't think
18 the conspiracy is limited to guns that just come into New York.

19 MS. BAHARANYI: The conspiracy is, certainly, should
20 be limited to guns that are received or transported into state
21 of residence -- gunman is able to prove. Nobody's state of
22 residence is Massachusetts and also only applies if a gun was
23 obtained outside of that state of residence and brought in.
24 So, my first point --

25 THE COURT: Yeah, but the point is what they agreed

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1 to, not what actually happened.

2 MS. BAHARANYI: Agreeing to permit that particular
3 offense with some sort of overt act towards that offense,
4 right?

5 THE COURT: Yeah. The overt act could be purchasing
6 anything, as you know.

7 MS. BAHARANYI: I think that's problematic here, your
8 Honor, is that we have that conduct in Massachusetts that
9 involves one firearm that they, can that they are intending to
10 prove was purchased by someone out of state and received into a
11 state of residence and none of the other --

12 THE COURT: I think we're talking -- forgive me,
13 because I have great admiration for your eloquent advocacy, but
14 I think what they're talking about is the nature of the
15 conspiracy. You can have a conspiracy where zero guns ever
16 actually meet the agreement. That's still a conspiracy if they
17 can show the elements of a conspiracy. So the objection is
18 overruled. And with the one loss that I mentioned, the opening
19 is received, is permitted on this ground. Of course the other
20 side can respond.

21 Okay. My understanding is the jury will be ready in
22 about five minutes or so. So, take a look now again at the
23 proposed preliminary instruction and tell me and I'll hear any
24 objection to it. It is largely consistent with what I received
25 from both sides but I'm obviously happy to hear any edits you

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1 suggest.

2 (Pause)

3 MS. BAHARANYI: Your Honor, we don't have any
4 objections to the preliminary instructions.

5 THE COURT: Okay. Anything from the government?

6 MS. SMYSER: Your Honor, the government doesn't have
7 any changes. I did want to flag, we have one issue as to our
8 first witness which while we're waiting on the jury happy to
9 address now or happy to address at a later time.

10 THE COURT: Go ahead.

11 MS. SMYSER: So, your Honor, the first government
12 witness is Officer Jarren Smalls who testified in the
13 suppression hearing a few months ago about the defendant's
14 arrest in the Bronx. And the government is planning to offer a
15 portion of the radio transmission which Officer Smalls heard
16 before he stopped the defendant. In that transmission there's
17 description of the person with a gun. And it explains why he
18 arrives at the scene. My understanding is that the defense has
19 a relevance objection to --

20 THE COURT: I just heard the jury is ready. So we
21 will take this up after opening statements but before the first
22 witness. So if you want to use the facilities, now is the time
23 to do so. We'll resume in five minutes.

24 MS. SMYSER: Thank you.

25 MS. BAHARANYI: Your Honor, I'm so sorry.

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1 THE COURT: Yes.

2 MS. BAHARANYI: I don't think we got the intended voir
3 dire questions for the jury.

4 THE COURT: The questions I am going to put?

5 MS. BAHARANYI: Yes.

6 THE COURT: You'll hear them when I put them.

7 MS. BAHARANYI: Okay. With respect to the ones that
8 we proposed, I don't know if the Court already made a decision
9 on those and what your Honor plans to include or not include --

10 THE COURT: You'll hear what I have to say. Then at
11 the end of every voir dire I ask the parties to come to the
12 sidebar if they want me to ask some other questions.

13 MS. BAHARANYI: Understood.

14 (Recess)

15 (Continued on next page)

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(Jury not present)

THE COURT: All right. So to the remaining members of the pool who dodged a bullet, you are not off the hook yet because you may be called for duty on another jury. You need to go down to the jury room that you must first came up from. We will send your cards with you.

Mr. Limphongpand, come on forward and we'll give you all the cards. Just give them to the jury clerk when you get back.

I want to express my thanks to you for your jury service. You are now excused. You can go back down.

(Prospective jurors excused)

THE COURT: Okay. So when we come back I'll read to the jury and give them a kind of the preliminary instruction then we'll have opening statements from both counsel. Then I think we'll probably be able to start before lunch with the first witness. So there was an issue that someone wanted to raise about the first witness.

MS. SMYSER: Yes, your Honor. The first witness is Officer Jarren Smalls who responded to the 911 call that the defendant having a gun. The government intends to introduce a portion of the radio transmission that Officer Smalls received before he responded or explain why he was there. And my understanding that the defense has a relevance objection to that.

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1 THE COURT: Let me hear from defense counsel.

2 MS. MAYO: Yes, your Honor.

3 We object to the relevance of introducing the actual
4 radio run into evidence that was obviously relevant during the
5 suppression hearing but now that we're not -- Officer Smalls
6 can testify about what you heard and why he was stopping our
7 client in the first place. So, we don't think it's necessary
8 to produce the actual radio run.

9 THE COURT: Did you -- to the preliminary question of
10 the sort and were you there pursuant to a professional as part
11 of your job or something like that -- I'm not wording it
12 exactly right -- but he has to explain why he was there. But I
13 agree with you, subject to hearing from the government, that
14 the why he's there is not particularly relevant.

15 MS. MAYO: Yes, your Honor. We think Officer Smalls
16 can testify as to why he was there and why he was stopping the
17 defendant.

18 THE COURT: Let me ask the government, what's wrong
19 with that?

20 MS. SMYSER: Your Honor, we do think that's relevant
21 and the reason is we don't want the jury to make assumptions
22 about why Officer Smalls was there. To be quite frank, the
23 defendant was standing on the sidewalk in a turban and I don't
24 want the jury to assume for other reasons Officer Smalls got
25 out of his car and approached the defendant. When you hear it

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1 on the radio run it gives context to Officer Smalls hearing
2 that there is a man with a specific description with a firearm
3 and he immediately responds and gets out of the car.

4 MS. MAYO: Your Honor, I think we would say that's
5 cumulative if Officer Smalls can testify to that fact that he
6 received a radio run describing a man with a firearm.

7 THE COURT: Okay. Given that representation, I think
8 that's sufficient. We don't need the actual call if he is
9 going to be able with both sides consent to testify to that.

10 MS. SMYSER: Your Honor, I hear that point. I do
11 think the radio run is necessary to corroborate what Officer
12 Smalls is saying. It is the first thing he is going to
13 corroborate while he is on the stand.

14 THE COURT: I'm not convinced. We'll go the way
15 defense counsel suggested. We'll take another ten-minute break
16 and then we'll resume.

17 (Recess)

18 THE COURT: Please be seated.

19 (Jury present)

20 THE COURT: The jurors can be seated immediately.
21 Everyone else stands for the jury. Except, I don't stand up
22 because I'm an old guy, but you can be seated immediately.

23 So, ladies and gentlemen, before we hear opening
24 statements I'm going to read a short preliminary instruction
25 and you can take it with you also back in the jury room for

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1 your guidance.

2 To the jury, before you begin to hear the evidence I
3 want to give you a brief overview of the two charges in this
4 case. After you've heard all the evidence and the parties have
5 made their closing arguments I will give you detailed
6 instructions of law that will displace this preliminary
7 instruction and will give to your deliberations.

8 This is a criminal case that concerns receiving or
9 transporting firearms in interstate commerce when you don't
10 have a license to do so. The government alleges in one of its
11 two charges that the defendant, Steven Perez, who goes by the
12 name of "Lucha El Por Libertad" or "Lucha El" under lawfully
13 intentionally and knowingly -- I'm sorry. The word "he"
14 shouldn't be there -- lacked a license.

15 (Pause)

16 THE COURT: I'm sorry. I was looking at an earlier
17 version. Let me pick up in the second paragraph.

18 This is a criminal case that concerns receiving or
19 transporting firearms in interstate commerce when you don't
20 have a license do so.

21 The government alleges in one of its two charges that
22 the defendant, Steven Perez, who goes by the name "Lucha El Por
23 Libertad" or "Lucha El" unlawfully, intentionally and knowing,
24 he lacked a license, received a firearm specifically Century
25 Arms Canik .9 millimeter handgun into his state of residence,

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1 New York that was purchased or otherwise obtained outside of
2 New York.

3 The government alleges in its other charge that
4 between May 2020 and July 2021 Lucha El conspired, that is,
5 agreed with one or more other persons to unlawfully,
6 intentionally without a license transport and receive firearms
7 that were purchased or otherwise obtained out of state into the
8 state of residency of person receiving or transporting the
9 firearm.

10 Lucha El has pleaded not guilty to each of those
11 charges. This means is presumed innocent on each charge until
12 and unless you were satisfied the government's proved each
13 essential element of that charge beyond a reasonable doubt, a
14 standard that I will explain to you later in this case.

15 Please remember that this preliminary instruction is
16 simply a very brief overview of the charges in this case. I
17 will give you more detailed final instructions that will
18 replace this overview and will govern your deliberations.

19 Okay. So now we're going to hear opening statements
20 of counsel. I want to caution you that nothing that counsel
21 says is evidence. The evidence, as I mentioned before, is
22 going to come from the testimony of the witnesses, the exhibits
23 that are received in evidence and there may be what we call
24 stipulations where the parties agree to some facts. And those
25 three things are the only sources of evidence.

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Opening statement - Ms. Nicholas

1 So why do we even have the statements? Well, it's
2 because the evidence is going to come in a little bit at a
3 time. So it may be useful to you to have a brief overview from
4 each side and what they think the evidence will show or fail to
5 show as the case may be. Because the government has the burden
6 of proof, we hear first from the government. So we'll hear now
7 from the government.

8 MS. NICHOLAS: Your Honor, may I proceed?

9 THE COURT: Yes.

10 MS. NICHOLAS: This is a case about guns, a case about
11 guns and a man who ignored the laws designed to keep
12 communities safe so that he could accomplish a simple goal, get
13 guns. This man, Steven Perez, the defendant. Get guns. And
14 he succeeded. Over and over again he got guns. He did it with
15 the help of a straw buyer, a man over 600 miles away who lied
16 to South Carolina gun dealers to help the defendant accomplish
17 this goal, getting guns no matter what the law says.

18 Members of the jury, that is why we're here. Because
19 the defendant committed a federal crime by getting guns from
20 outside the state he lives in without a license. And he knew
21 exactly what he was doing.

22 Laws like the ones the defendant broke exist for a
23 reason. Guns are dangerous and so there are state and federal
24 laws that govern how guns are sold and transported, laws that
25 require gun stores to follow certain procedures and require gun

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Opening statement - Ms. Nicholas

1 buyers to follow certain requirements, laws that were violated
2 here.

3 You see the defendant, Steven Perez, who you'll hear
4 referred to as "Lucha El" lives in the Bronx. He is a resident
5 of New York state, a state that requires handgun buyers to have
6 a license before they buy guns. The defendant did not have a
7 license. He never even tried to get one. So he had a problem.
8 The defendant was fixated on getting guns, but without a New
9 York license he could not legally buy guns for himself in New
10 York. He found another way, an illegal way to get guns. How
11 did he do it? A straw buyer, a man living hours away who was
12 willing to lie on government forms to get guns for the
13 defendant, forms that the defendant straw buyer filled out
14 under the penalty of perjury at South Carolina gun stores so
15 that he could buy guns for defendant in South Carolina and then
16 secretly and illegally transport those guns into defendant's
17 hands here in New York.

18 It was a simple plan. The defendant wanted guns but
19 he couldn't get them in New York. So the straw buyer walked
20 into gun stores in South Carolina. He presented an
21 identification card. He lied on an official form and he bought
22 guns. What did he do after he bought those guns? He
23 communicated with the defendant. He traveled to the Bronx and
24 he delivered those guns to the defendant, bought the guns in
25 South Carolina, talked to the defendant, delivered those guns

N8SAAPER3

Opening statement - Ms. Nicholas

1 to the defendant in the Bronx. The defendant and his
2 associates paid the straw buyer for those trips on at least
3 three occasions sending money from a check cash store in the
4 Bronx to the straw buyer in South Carolina.

5 On two occasions the defendant was actually arrested
6 with guns that the straw buyer had purchased for him in South
7 Carolina. First, he was arrested in the Bronx with a handgun
8 in his bag. Second, just two weeks later he was arrested
9 again, this time in Massachusetts where he was traveling with
10 his associates, members of an armed group that claimed to be a
11 militia, a militia that was heading from Rhode Island to a
12 training exercise in Maine. Law enforcement searched the
13 vehicles that the defendants and his associates drove in, and
14 that day law enforcement seized a total of nine guns from the
15 group. One of those guns was a particular handgun, another
16 handgun the straw buyer purchased for the defendant in South
17 Carolina and delivered to him right here in New York City.
18 Just like the handgun seized from the defendant in the Bronx,
19 both bought by that South Carolina straw buyer and delivered to
20 the defendant in New York.

21 So that's what the evidence will show, that the
22 defendant worked with others to illegally receive firearms in
23 New York that had been purchased by a straw buyers in South
24 Carolina.

25 Now, how will the government prove its case beyond a

N8SAAPER3

Opening statement - Ms. Nicholas

1 reasonable doubt? You're going to see and hear different types
2 of evidence in this trial. You will see the guns, the two guns
3 that the straw buyer bought for the defendant, the gun pulled
4 out of the defendant's bag in the Bronx and the gun seized
5 during the defendant's arrest in Massachusetts.

6 You're also going to hear from law enforcement
7 officers who arrested the defendant and seized his guns.
8 You'll see videos from these arrests including video capturing
9 the defendant and his friends armed and dressed in military
10 gear discussing their guns, suggesting that they knew where the
11 guns came from. You'll see and hear the defendant and you'll
12 see another man, a man standing right next to the defendant,
13 one of the defendant's friends who also sent money to that
14 straw buyer in South Carolina.

15 You're also going to see the forms that the straw
16 buyer bought these two seized guns as well as many others.
17 You'll also see the Western Union report showing payments to
18 the defendant and his friends right around the time the straw
19 buyer was buying guns. You are going to see evidence from
20 cellphones including cellphones seized from the defendant, as
21 well as that group in Massachusetts. That evidence includes
22 text messages from the group references their plans for a
23 military style training event. You'll see that in those text
24 messages the groups discussed the need to prepare to buy guns
25 and obtain other supplies. You'll see how members of that

N8SAAPER3

Opening statement - Ms. Nicholas

1 group reacted when they learned just two weeks before their
2 planned exercise that the defendant, a trusted member of their
3 inner circle, had been arrested in the Bronx with a gun
4 purchased by the straw buyer.

5 You will also see location information for cellphones
6 used by the defendant and the straw buyer in South Carolina.
7 You'll see that they were located close together in the Bronx
8 each time the straw buyer traveled to New York. You'll also
9 see phone record that show the defendant communicated with the
10 straw buyer and facilitated communications between the straw
11 buyer and at least two other New York residents. At the end of
12 this trial you are going to know exactly what happened here.
13 The defendant illegally received guns in New York, hand
14 delivered to the Bronx from a straw buyer in South Carolina.

15 Now, members of the jury, this will not be a long
16 trial but it is an important one. The evidence is going to
17 come in piece-by-piece and at end of the trial we'll have
18 another chance to come back and speak with you again to explain
19 how all of this evidence gets together. But between now and
20 then I'm going to ask you to do three things. First, pay close
21 attention to the evidence. Second, listen to Judge Rakoff's
22 instructions on the law, and third use your common sense, the
23 same common sense you used to make important decisions in your
24 lives everyday.

25 If you do those three things you'll reach the only

N8SAAPER3

Opening Statement - Ms. Mayo

1 verdict consistent with the evidence, the defendant is guilty.

2 THE COURT: Thank you very much. We'll hear now from
3 defense counsel.

4 MS. MAYO: Thank you, your Honor.

5 Lucha El Por Libertad, Lucha El is not here for
6 possessing a gun. He is not charged with carrying a gun. He's
7 certainly not here because he was using or waiving around a gun
8 or threatening anyone with a gun. So why exactly is Lucha El
9 sitting here today? In June of 2021 Lucha El was in his
10 neighborhood in the Bronx, a neighborhood that was still
11 emerging from the COVID pandemic still reeling with the crime
12 wave that swept the city during that time. It was at this time
13 in this atmosphere that Lucha El was stopped by the police,
14 stopped while he was standing in front of his apartment
15 building chatting with his elderly neighbors, minding his own
16 business, all because he had a gun in his bag.

17 That gun, Lucha El had gotten it from someone in his
18 family, someone he knew and trusted, someone he had grown up
19 with in the Bronx who had since moved to South Carolina but
20 still came to visit him sometimes when he was in town, a man
21 named Keith Vereen. The only reason that Lucha El is sitting
22 here today is because that gun was purchased in another state
23 and Lucha El accepted it in New York. But the federal
24 government doesn't go around prosecuting people just because
25 they received guns from different states. To be a crime the

N8SAAPER3

Opening Statement - Ms. Mayo

1 government has to prove that Lucha El intended to do something
2 unlawful by accepting that gun in New York City. To be a crime
3 the government must prove that he acted with a bad purpose in
4 his mind. But Lucha El did not know there was anything
5 unlawful about accepting that gun. To Lucha El, what could be
6 wrong about accepting a gun from someone he's known his entire
7 life? Lucha El by receiving that gun, that gun purchased by
8 someone else in South Carolina did not intend to disobey the
9 law.

10 This matter is because this entire case turns on you
11 deciding what was in Lucha El's mind. Did Lucha El intend to
12 do something unlawful? Did he have a bad purpose to disobey
13 the law when he received this handgun from someone that he
14 knew? Did Lucha El agree with other people to transport guns
15 to do something unlawful? The answer to both questions is no.

16 But how will you know that Lucha El did not act with
17 this bad purpose? How will you know that he did not agree with
18 other people to do something unlawful? You will see the moment
19 that officers surrounded Lucha El standing in front of his
20 apartment building talking with his neighbors on that June
21 night. It was captured on the body worn camera footage of one
22 of the officers who stopped him. You'll hear that Lucha El was
23 stopped by the police just because he had a gun, not because
24 there had been a shooting or because anyone had been injured,
25 but just because he had a gun. And when Lucha El is stopped

N8SAAPER3

Opening Statement - Ms. Mayo

1 you'll see that he doesn't run. He doesn't hide. He don't try
2 to fight off the police. In fact, he is bewildered as to why
3 they're even stopping him in the first place. He says, yeah,
4 that's my arm. He doesn't know that he did anything wrong and
5 what you won't see is any evidence to the contrary. You won't
6 see text messages between Lucha El and Keith Vereen. You won't
7 hear recordings of phone calls between them talking about guns,
8 where to get guns, what states to get guns from. You'll see a
9 Western Union payment made from Lucha El to Keith Vereen, but
10 that one time payment was for \$350. That's not even enough to
11 cover the cost of a single gun.

12 As to other people, the associates that the government
13 claims are Lucha El's co-conspirators, you will see text
14 messages but most of them won't even involve Lucha. He didn't
15 send them and he didn't receive them. None of these messages
16 include Lucha talking about guns.

17 What you won't see is Lucha El intending to disobey
18 the law. This question of what Lucha El knew and believed and
19 intended is the critical question that you have to anticipate
20 here. Did Lucha El act with a bad purpose? It's a simple
21 question. But the government wants to make a case about
22 everything but that question, everything but that issue of what
23 was in Lucha El's mind. The government doesn't want you to
24 focus on that. You just heard the government stand up here and
25 tell you about other guns that Keith Vereen purchased about

N8SAAPER3

Opening Statement - Ms. Mayo

1 other people's text messages that don't involve Lucha El, about
2 other agreements and other plans that other people made without
3 involving Lucha.

4 But this is all a distraction. Because weaving in
5 these other gun references, other statements by other people,
6 statements that have no connection to Lucha El, the government
7 will only complicate what is simple and distract you from the
8 truth. Don't fall for it. This case is about Lucha El and his
9 state of mind. Did Lucha El receive a gun purchased out of
10 state knowing it was unlawful? He did not. Did Lucha El agree
11 with other people to transport guns purchased out of state? he
12 did not. This case is about a man who was trying to protect
13 himself by obtaining a handgun who simply did not know he could
14 not accept it.

15 Pay close attention to the relevant evidence. And
16 like the government said, use your common sense. When you
17 ignore the distractions and focus on what Lucha says, what
18 Lucha does and what Lucha believes, then you'll know that Lucha
19 El is not guilty. And after you have heard all of this
20 evidence we will ask you to return a verdict of not guilty.

21 THE COURT: Thank you very much.

22 All right. The government will call their first
23 witness.

24 MS. SMYSER: Your Honor, the government calls Police
25 Officer Jarren Smalls.

N8SAAPER3

Smalls - Direct

1 JARREN SMALLS,

2 called as a witness by the Government,

3 having been duly sworn, testified as follows:

4 COURTROOM DEPUTY: Please state your name and spell it
5 for the record.

6 THE WITNESS: Officer Jarren Smalls, J-a-r-r-e-n,
7 Smalls, S-m-a-l-l-s.

8 DIRECT EXAMINATION

9 BY SMYSER:

10 Q. Morning, Officer Smalls.

11 A. Good morning.

12 Q. Where do you presently work?

13 A. New York Police Department.

14 Q. What is your title there?

15 A. Police officer.

16 Q. How long have you worked for the NYPD?

17 A. Almost five and a half years.

18 Q. Do you work in a particular unit or team for NYPD?

19 A. Yes. I work for Bronx Public Safety.

20 Q. What are some of your responsibilities as an officer for
21 Bronx Public Safety?

22 A. We patrol high crime locations, areas with an increase of
23 shootings, gang activities, gang violence, robberies.

24 Q. Could you pull the microphone a little bit closer to you.

25 In that role, Officer Smalls, do you work in a particular

N8SAAPER3

Smalls - Direct

1 precinct or throughout the Bronx?

2 A. Throughout the Bronx.

3 Q. Prior to joining Bronx Public Safety did you work in a
4 precinct?

5 A. Yes.

6 Q. Which precinct was that?

7 A. The 52nd Precinct.

8 Q. Where is the 52 Precinct?

9 A. It covers the Norwood section of the Bronx, University
10 Heights, Fordham, Gun Hill.

11 Q. How long did you worked for the 52nd Precinct?

12 A. Approximately, five years.

13 Q. Were you working there in June of 2021?

14 A. Yes.

15 Q. Were you assigned to a particular unit in the precinct at
16 that time?

17 A. Yes.

18 Q. What was that?

19 A. Public Safety Team.

20 Q. Were your responsibilities as with the Public Safety Team
21 similar to your current responsibilities with Bronx Public
22 Safety?

23 A. Yes.

24 Q. As part of your responsibilities did you patrol the 52nd
25 Precinct?

N8SAAPER3

Smalls - Direct

1 A. Yes.

2 Q. When you were on patrol, what was some of the kinds of
3 things that you did?

4 A. Responded to radio runs which is 911 calls, emergencies,
5 accidents, made arrests.

6 Q. You mentioned the term "radio run". What does that mean?

7 A. When somebody calls 911 to report a crime or an emergency.

8 Q. Officer Smalls, I want to direct your attention to June
9 23rd of 2021. Were you on duty that day?

10 A. Yes.

11 Q. Did you make any arrests that day?

12 A. Yes.

13 Q. Who did you arrest?

14 A. A Mr. Steven Perez.

15 Q. Do you know Mr. Perez by any other names?

16 A. Yes.

17 Q. What names?

18 A. "Lucha".

19 Q. Do you see Mr. Perez or Lucha in the courtroom today?

20 A. Yes, I do.

21 Q. Can you identify him based on where he is sitting and an
22 article of clothing that he is wearing?

23 A. Yes. He is sitting between those two ladies back there
24 wearing a white shirt.

25 MS. SMYSER: Your Honor, let the record reflect the

N8SAAPER3

Smalls - Direct

1 witness has identified the defendant?

2 THE COURT: Yes.

3 Q. Officer Smalls, we'll talk about the specifics of that
4 arrest in a moment but I want to talk about the evening of June
5 23rd.

6 Were you patrolling on that night?

7 A. Yes.

8 Q. On foot or by car?

9 A. By car.

10 Q. Were you alone or with other officers?

11 A. I was with my partner, Officer Carter.

12 Q. Who was driving?

13 A. My partner.

14 Q. Where were you sitting?

15 A. In the front passenger seat.

16 Q. I want to direct your attention to approximately 9:50 p.m.
17 on that evening were you monitoring the radio around that time?

18 A. Yes.

19 Q. Did you receive any radio transmissions?

20 A. Yes.

21 Q. What did you learn from the radio transmission?

22 A. That there was a male in the vicinity of East Gun Hill Road
23 and Perry Avenue armed with a firearm.

24 Q. On that radio transmission did they describe what that man
25 looked like?

N8SAAPER3

Smalls - Direct

1 A. Yes. They gave a description of a male Hispanic,
2 approximately five/six wearing a white T-shirt, black pants
3 wearing a blue purse with a black and white turban.

4 Q. Did they say what the man's name was?

5 A. Yes. Said his name was "Lucha".

6 Q. Could you just remind us what initiates that radio
7 transmission?

8 A. That is when someone calls 911 to report a crime or an
9 emergency or something happening.

10 Q. When you received that radio transmission, where were you?

11 A. I was in Sector David of the 52nd Precinct.

12 Q. What's a sector?

13 A. A sector is a smaller portion of a precinct broken down.

14 Q. Where is Sector David, just generally?

15 A. It covers the Gun Hill area of the 52nd Precinct.

16 Q. How close were you to East Gun Hill Road and Perry Avenue
17 where that was mentioned on the radio run?

18 A. It was very close. It was blocks, within blocks.

19 MS. SMYSER: Could we please pull up for the witness
20 only what has been marked for identification as Government
21 Exhibit 204.

22 Q. Officer Smalls, can you see that?

23 A. Yes.

24 Q. Do you recognize it?

25 A. Yes.

N8SAAPER3

Smalls - Direct

1 Q. What is this?

2 A. This is a portion of Sector David.

3 Q. How do you know?

4 A. I paroled this location for almost five years.

5 Q. Is it a fair and accurate depiction of the area you were
6 patrolling on the night of June 23rd?

7 A. Yes.

8 MS. SMYSER: Government offers Government Exhibit 204.

9 MS. MAYO: No objection.

10 THE COURT: Received.

11 (Government's Exhibit 204 received in evidence)

12 MS. SMYSER: May we publish, your Honor?

13 THE COURT: Please.

14 (Pause)

15 Q. Officer Smalls, using Government Exhibit 204 --

16 MS. SMYSER: Has that been published for the jury?

17 Q. Using Government Exhibit 204, could you please show the
18 jury where you were when you received a radio run, and I think
19 you can write on the screen.

20 A. Sure. I was in the vicinity of Hull Avenue between -- it
21 is not allowing me to write.

22 Q. Just walk us through where you were.

23 A. Between East Gun Hill Road and East 209 Street and Hull
24 Avenue.

25 Q. After you received the radio run where did you go?

N8SAAPER3

Smalls - Direct

1 A. I went southbound on Hull Avenue, then I made a right onto
2 East 209 Street going westbound and made another right onto
3 Perry Avenue going northbound.

4 Q. When with you made a right, were you near that supermarket
5 that's indicated on the map?

6 A. Yes.

7 Q. Could you please describe where you eventually saw the man?

8 A. In that location where that red flag is on Perry Avenue.

9 Q. Officer Smalls, were you wearing a body worn camera that
10 day?

11 A. Yes.

12 Q. Does your body worn camera need to be turned on in order to
13 record?

14 A. Yes, it does.

15 (Continued on next page)

N8SBPER2 Smalls - Direct

1 BY MS. SMYSER:

2 Q. Could you just explain how that works?

3 A. So our body worn camera is always running. It only
4 memorializes footage once we press the activation button. It
5 will go back a minute prior and record what was going on
6 without the audio, and then you'll get the audio up at the
7 minute that you pressed it.

8 Q. We can take down Government Exhibit 204.

9 Officer Smalls, do you see in front of you a disk
10 that's been marked for identification as Government Exhibit
11 202A?

12 A. Yes.

13 Q. Do you recognize that?

14 A. Yes.

15 Q. What is it?

16 A. This is a copy of my body worn camera.

17 Q. How do you know that?

18 A. I watched it and then I signed and initialed and dated it.

19 Q. Did you review its contents before testifying today?

20 A. Yes, I did.

21 Q. Is it a fair and accurate representation of events on the
22 night of June 23, as captured by your body worn camera?

23 A. Yes.

24 MS. SMYSER: Your Honor, the government offers
25 Government Exhibit 202A.

N8SBPER2

Smalls - Direct

1 THE COURT: Any objection?

2 MS. MAYO: No objection, your Honor.

3 THE COURT: Received.

4 (Government's Exhibit 202 received in evidence)

5 MS. SMYSER: Your Honor, at this time I would also
6 offer a stipulation between the parties. It's Government
7 Exhibit 1008. I'd like to read a portion of that to the jury.

8 THE COURT: Okay.

9 MS. SMYSER: The parties agree that Government Exhibit
10 202AT is a true and accurate transcript of Government Exhibit
11 202A. And Government Exhibit 205T is a true and accurate
12 transcript of Government Exhibits 205A, 205B and 205C.

13 Your Honor, at this point I would like to publish
14 Government Exhibit 202AT which is a transcript as an aid to the
15 jury.

16 THE COURT: Any objection?

17 MS. MAYO: No objection.

18 THE COURT: Received.

19 (Government's Exhibits 202AT, 205T received in
20 evidence)

21 MS. SMYSER: Mr. Ahuja, could you please display
22 Government Exhibit 202A side by side with Government Exhibit
23 202AT.

24 Q. Officer Smalls, can you see that?

25 A. Yes.

N8SBPER2

Smalls - Direct

1 Q. Before we begin playing your body camera, could you just
2 describe what we're looking at on the right side of the screen?

3 A. You're looking at footage captured from my body worn camera
4 from my vantage point that evening.

5 Q. Does your body worn camera record the date and time?

6 A. Yes, it does.

7 Q. What is the date and time that this clip begins?

8 A. It's June 23rd of 2021, at 21:56 hours.

9 Q. Mr. Ahuja, could you please play the clip for the first ten
10 seconds.

11 (Media played)

12 (Media stopped)

13 Q. Officer Smalls, what happened in this clip?

14 A. My partner rounded the corner of East 209th Street and
15 Perry Avenue. As we're rounding the corner, I observed a male
16 subject matching the specific description that was put over the
17 radio, and I'm pointing him out to my partner.

18 Q. Mr. Ahuja, could we continue to play from ten seconds to
19 one minute and 15 seconds, and we can start with the transcript
20 on page one, line two.

21 (Media played)

22 (Media stopped)

23 Q. Officer Smalls, who was this man that you approached?

24 A. Mr. Steven Perez.

25 Q. As you approached the defendant, who, if anyone, was

N8SBPER2

Smalls - Direct

1 approaching with you?

2 A. My partner Officer Cotter.

3 Q. When you got to the defendant, what did you do?

4 A. I frisked his blue purse, and I felt a hard L-shape object
5 that was consistent to the shape and size of a firearm.

6 Q. What happened after you frisked the bag and felt the
7 L-shape object?

8 A. That led me to believe a firearm was in the bag, so I told
9 my partner 92, which means arrest, so my partner can begin to
10 handcuff Mr. Steven Perez.

11 Q. What did Officer Cotter do after he heard you say 92?

12 A. He immediately started handcuffing Mr. Steven Perez.

13 Q. The defendant said a few times, "That's my arm." What did
14 you understand the defendant to mean by that?

15 A. That being his firearm.

16 Q. At the end of the clip here you took the blue bag off of
17 the defendant, why did you do that?

18 A. Cause the defendant I believe was potentially armed with an
19 illegal firearm, dangerous to have subjects on the street to be
20 armed with a weapon, especially when there's other officers in
21 the street and also other people in the street.

22 MS. MAYO: Objection.

23 THE COURT: Overruled.

24 A. Also when there's other people in the street. So for our
25 safety and the safety of others on the street, I want that

N8SBPER2 Smalls - Direct

1 weapon off the subject.

2 Q. Mr. Ahuja, we can continue now to play Government exhibit
3 202A, and we're going to play through the end of the clip and
4 the transcript here will start on page two, line five.

5 (Media played)

6 (Media stopped)

7 Q. Officer Smalls, what were you doing in this clip?

8 A. Once I removed the bag off of him, I looked inside the bag
9 to make sure there was actually a firearm in the bag. I then
10 asked him if he had a permit for it and he said no.

11 Q. The defendant said, I don't need a permit in response to
12 your question whether he had one. Why did you ask him whether
13 he had a permit?

14 A. Because it's New York State and New York City law to have a
15 permit for a handgun.

16 Q. At any point after this approach did you look up whether
17 the defendant had a permit for a handgun?

18 A. Yes, I did.

19 Q. How did you do that?

20 A. We ran an individual in our DAS system. Our DAS system is
21 a database we use in the New York City Police Department to
22 basically run people's pedigree information, get their pedigree
23 information, see if they have any licenses, permits, if they
24 made any reports, if they been a victim of anything or have any
25 domestic incident reports or any arrest they may have had in

N8SBPER2 Smalls - Direct

1 the city.

2 Q. Did the defendant have a permit?

3 A. No.

4 Q. Officer Smalls, was your partner Officer Cotter wearing
5 body worn camera that day?

6 A. Yes, he was.

7 Q. Could you look in front of you for the disk that contains
8 exhibits marked for identification as Government's Exhibits
9 205A, 205B and 205C.

10 Do you recognize it?

11 A. Yes.

12 Q. What is this?

13 A. This is a copy of my partner's body worn camera footage.

14 Q. How do you know?

15 A. I watched it and then I signed and dated it.

16 Q. Were you present when Officer Cotter's body cam footage was
17 running?

18 A. Yes.

19 MS. SMYSER: Your Honor, the government offers
20 Government's Exhibits 205A, 205B and 205C.

21 MS. MAYO: No objection.

22 THE COURT: Received.

23 (Government's Exhibits 205A, 205B and 205C received in
24 evidence)

25 MS. SMYSER: Your Honor, we'd also like to publish

N8SBPER2

Smalls - Direct

1 Government Exhibit 205T which is a transcript as an aid to the
2 jury. Mr. Ahuja, could you please display 205A side by side
3 with 205T.

4 Q. And Officer Smalls, could you explain what we are looking
5 at here on the right-hand side of the screen?

6 A. You're looking at a still from my partner's body cam. You
7 see me in it. You see Mr. Steven Perez in it. You see my
8 partner's arm and another police officer in it as well.

9 Q. Does this capture some of what we just watched from a
10 different vantage point?

11 A. Yes.

12 Q. Mr. Ahuja, could you please play the clip and scroll along
13 in Government Exhibit 205T.

14 (Media played)

15 (Media stopped)

16 Q. Now, could we please display Government Exhibit 205B next
17 to 205T.

18 Officer Smalls, where does this body camera footage
19 come from?

20 A. This is also from my partner's body camera.

21 Q. Where is the defendant standing in relation to your
22 partner?

23 A. To his right.

24 Q. Mr. Ahuja, could you please play the clip which corresponds
25 to page one, lines 13 through 15 of the transcript.

N8SBPER2 Smalls - Direct

1 (Media played)

2 Q. The defendant said a permit is a permission, what did you
3 understand him to mean?

4 A. That --

5 MS. MAYO: Objection.

6 THE COURT: Overruled.

7 A. That a permit is basically him asking for permission to
8 have a firearm. And I ask him if he had one and he said no.

9 Q. Mr. Ahuja, could you please display Government Exhibit 205C
10 side by side with 205T.

11 Officer Smalls, what are we looking at here?

12 A. This is a clip from my partner's body worn camera.

13 Q. Where is the defendant in relation to this clip?

14 A. Should be to his right.

15 Q. Mr. Ahuja, could we please play this clip and it's going to
16 start on page one, line 17 on the transcript to the left.

17 (Media played)

18 (Media stopped)

19 Q. Officer Smalls, here the defendant stated that you should
20 not uphold legalities and regulations and mandates.

21 By that time had you already placed the defendant
22 under arrest?

23 A. Yes.

24 Q. Did those statements change your view on arresting him?

25 A. No.

N8SBPER2

Smalls - Direct

1 MS. SMYSER: Your Honor, I'd just like to clarify
2 whether the jury was able to see that video?

3 THE COURT: Were you?

4 JUROR: No.

5 MS. SMYSER: Could we replay the video. We'll start
6 at the beginning of Government Exhibit 205C, and again this is
7 going to start on line 17 of the transcript there.

8 (Media played)

9 (Media stopped)

10 Q. Now we can take down Government Exhibit 205C and 205T.

11 Officer Smalls, during your interaction with the
12 defendant, did he tell you his name?

13 A. Yes.

14 Q. What did he say that his name was?

15 A. Lucha.

16 Q. Did he provide any identification?

17 A. Yes, he did.

18 Q. Mr. Ahuja, could you display for the witness only what's
19 been marked for identification as Government Exhibit 203.

20 Officer Smalls, do you recognize this?

21 A. Yes, I do.

22 Q. What is it?

23 A. This is the ID that was provided by Mr. Perez.

24 Q. How do you know?

25 A. It's the name that he provided to us on scene. It also has

N8SBPER2 Smalls - Direct

1 a picture of him.

2 Q. Is this a fair and accurate representation of the ID he
3 provided on that night?

4 A. Yes.

5 MS. SMYSER: Your Honor, the government offers
6 Government Exhibit 203.

7 MS. MAYO: No objection.

8 THE COURT: Received.

9 (Government's Exhibit 203 received in evidence)

10 MS. SMYSER: May we publish it?

11 THE COURT: Please.

12 MS. SMYSER: Please publish Government Exhibit 203,
13 and we can take that down.

14 BY MS. SMYSER:

15 Q. Officer Smalls, after the defendant was placed under
16 arrest, did you take him anywhere?

17 A. Yes.

18 Q. Where?

19 A. Took him to the 52nd precinct.

20 Q. Once you got to the precinct, what did you do with that
21 firearm that you had seized from the defendant?

22 A. I gave it to my partner Officer Cotter.

23 Q. What happened after you gave that gun to Officer Cotter?

24 A. We called ECT.

25 Q. What's ECT?

N8SBPER2

Smalls - Direct

1 A. The New York City police department evidence collection
2 team.

3 Q. Did the evidence collection team respond?

4 A. Yes.

5 Q. Were you present when they responded?

6 A. Yes, I was.

7 Q. What does the evidence collection team do with respect to
8 firearms?

9 A. They'll swab it. They'll fume and dust it for prints.
10 They'll unload it, make it safe, and take photographs of it as
11 well.

12 Q. Did the evidence collection team examine this particular
13 firearm?

14 A. Yes, they did.

15 Q. Was this gun loaded?

16 A. Yes, it was.

17 Q. While the evidence collection team was unloading the gun
18 and making it safe, did they take photographs?

19 A. Yes.

20 Q. Mr. Ahuja, could you please pull up for the witness only a
21 few exhibits marked for identification first as Government's
22 Exhibits 520A through C, and could you also show for
23 identification Government Exhibit 521A and 522A and B.

24 Officer Smalls, do you recognize these?

25 A. Yes, I do.

N8SBPER2 Smalls - Direct

1 Q. What are they?

2 A. These are photographs of the firearm that was recovered off
3 of Mr. Perez.

4 Q. How do you know that?

5 A. It has the distinctive red trigger that I remember that
6 evening. It has a mounted flashlight on it and also a little
7 pinky extender on the magazine.

8 Q. Is this a fair and accurate depiction of the firearm and
9 the magazine as it was seized from the defendant that day?

10 A. No.

11 Q. Why not?

12 A. This is a photograph with the firearm unloaded. When it
13 was seized from Mr. Perez, the firearm was loaded.

14 Q. Is it a fair and accurate representation of the gun after
15 the evidence collection team disassembled it?

16 A. Yes.

17 MS. SMYSER: Your Honor, the government offers
18 Government's Exhibit 520A through C, 521A and 522A and B.

19 MS. MAYO: No objection.

20 THE COURT: Received.

21 (Government's Exhibits 520A, 520B, 520C, 521A, 522A,
22 522B received in evidence)

23 MS. SMYSER: May we publish?

24 THE COURT: Yes.

25 BY MS. SMYSER:

N8SBPER2 Smalls - Direct

1 Q. Mr. Ahuja, may we please publish 520A.

2 Officer Smalls, what is this?

3 A. This is a photograph of the firearm.

4 Q. Is this the same gun that was seized from the defendant?

5 A. Yes, it was.

6 Q. What brand of firearm is this?

7 A. This is a Canik.

8 Q. Mr. Ahuja, could you now please display Government Exhibit
9 520C.

10 Officer Smalls, is this the same gun?

11 A. Yes, it is.

12 Q. I'm going to read the serial number depicted on the firearm
13 in Government Exhibit 520C which is 20 CB 25810.

14 Do you see that Officer Smalls?

15 A. Yes, I do.

16 Q. Is that correct?

17 A. Yes, it is.

18 Q. Mr. Ahuja, could you please publish now Government Exhibit
19 522A. Officer Smalls, what is the item on the right here?

20 A. That is the magazine.

21 Q. Could you explain what a magazine is?

22 A. A magazine is what holds the rounds or the bullets and that
23 goes inside the firearm.

24 Q. Is this what the magazine looked like when it was pulled
25 out of that firearm?

N8SBPER2

Smalls - Direct

1 A. Yes.

2 Q. Mr. Ahuja, could you now display Government Exhibit 522B,
3 please.

4 Officer Smalls, do you see the bullets on the screen?

5 A. Yes, I do.

6 Q. Where did those come from?

7 A. Those came from inside the magazine.

8 Q. So they were inside the firearm?

9 A. Correct.

10 Q. How many bullets were in the gun?

11 A. Twelve.

12 Q. Officer Smalls, could you please now look to your right for
13 two items marked for identification as Government Exhibits 521
14 and 522.

15 A. Yes.

16 Q. Do you see those?

17 A. Yes, I do.

18 Q. Do you recognize them?

19 A. Yes.

20 Q. What are they?

21 A. They are the rounds that were in the magazine which were in
22 the firearm and the magazine itself as well that was inside the
23 firearm.

24 Q. How do you know?

25 A. They're labeled. They were in the same magazine that I

N8SBPER2 Smalls - Direct

1 recognize from the firearm.

2 MS. SMYSER: Your Honor, the government offers
3 Government's Exhibits 521 and 522.

4 MS. MAYO: Your Honor, may we briefly just examine the
5 evidence ourselves?

6 THE COURT: Yes.

7 MS. MAYO: May we approach?

8 THE COURT: Yes.

9 MS. MAYO: Thank you, your Honor. No objection.

10 THE COURT: Received.

11 (Government's Exhibits 521, 522 received in evidence)

12 BY MS. SMYSER:

13 Q. Officer Smalls, can you please take Government Exhibit 522
14 and hold it up for the jury.

15 And what is that?

16 A. This is the magazine that was inside the firearm.

17 Q. You can set that down.

18 And next could you please display Government Exhibit
19 521. What is this?

20 A. These are the rounds or bullets that were seated inside the
21 magazine that was ultimately seated inside the firearm.

22 Q. Officer Smalls, could you next look to your right for the
23 item marked for identification as Government Exhibit 520.

24 Do you recognize that?

25 A. Yes, I do.

N8SBPER2

Smalls - Direct

1 Q. What is it?

2 A. This is the firearm that was recovered off of Mr. Steven
3 Perez.

4 Q. How do you know?

5 A. It's labeled. It matches the exact firearm with the red
6 trigger guard, the mounted flashlight from that evening.

7 MS. SMYSER: Your Honor, the government offers
8 Government Exhibit 520.

9 MS. MAYO: No objection.

10 THE COURT: Received.

11 (Government's Exhibit 520 received in evidence)

12 BY MS. SMYSER:

13 Q. Officer Smalls, could this gun be loaded right now?

14 A. No.

15 Q. Why not?

16 A. There are zip ties through the barrel and the magazine
17 well, so it doesn't allow for a magazine to be inserted in it
18 or a round to be inserted in the chamber.

19 Q. Was it loaded on the night of June 23, 2021?

20 A. Yes, it was.

21 MS. SMYSER: Could the witness please walk Government
22 Exhibit 520 safely in front of the jury.

23 THE COURT: Yes.

24 MS. SMYSER: Your Honor, may I have just a moment. No
25 further questions.

N8SBPER2

Smalls - Direct

1 THE COURT: All right. So we have five minutes before
2 lunch, but we could break early or we could start the cross,
3 whichever defense counsel prefers.

4 MS. MAYO: Your Honor, we can take a break now.

5 THE COURT: Ladies and gentlemen, we'll take our lunch
6 break at this time and we'll resume a couple of minutes before
7 2:00. We're only going as I mentioned today at 3:30 because of
8 other matters, so we won't take any further break after lunch
9 so be prepared to sit 2:00 to 3:30. Have a very good lunch and
10 we'll see you at 2:00.

11 (Continued on next page)

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N8SBPER2

Smalls - Cross

(Jury not present)

THE COURT: Please be seated. Let me ask defense counsel how do you propose to put before the jury the evidence of the things you mentioned in your opening statement unless you're planning to call the defendant as a witness?

MS. BAHARANYI: Your Honor, if the evidence doesn't come out through any of the government's witnesses, then we have the option of obviously putting on Lucha El as a witness or putting on another witness who can help support that.

THE COURT: Who would that be?

MS. BAHARANYI: Possibly -- obviously at this point we haven't decided given the government's case is still open, but possibly Maria Otero.

THE COURT: Because, the reason I mention this, the defendant doesn't have to decide whether to take the stand or not until the close of the government's case, although he has to decide right then and there. But if there are other witnesses who the defense is going to call, I think they need to give the government at least 24 hours' notice before the close of government's case.

MS. BAHARANYI: I understand, your Honor.

THE COURT: Very good. We'll see you at 2:00.

(Recess)

N8SBPER2

Smalls - Cross

AFTERNOON SESSION

2:00 p.m.

(Jury not present)

THE COURT: You recall at 3:30 we'll have the *Daubert* hearing on the one witness that I thought we needed it.

MS. NICHOLAS: Yes, your Honor. We're ready for that.

THE DEPUTY CLERK: Jury entering the courtroom.

(Jury present)

THE COURT: Please be seated. All right.

Cross-examination.

CROSS-EXAMINATION

MS. MAYO: Thank you, your Honor.

BY MS. MAYO:

Q. Good afternoon, Officer Smalls.

A. Good afternoon.

Q. You referred in your direct testimony several times to the name Steven Perez?

A. Yes.

Q. Multiple times?

A. Yes.

Q. You're aware that the name he goes by is Lucha El?

A. Yes.

Q. His ID had the name Lucha El on it that he gave to you?

A. Yes.

Q. You testified that you and your partner were on patrol on

N8SBPER2

Smalls - Cross

1 the night of June 23, 2021?

2 A. Yes.

3 Q. When you received this information about a man with a
4 firearm?

5 A. Correct.

6 Q. When you heard this information, you drove to Perry Avenue?

7 A. Correct.

8 Q. And while you were driving on Perry Avenue you saw Lucha El
9 on the sidewalk?

10 A. Correct.

11 Q. Standing to the right of you?

12 A. Correct.

13 Q. Your partner stopped your patrol car?

14 A. Yes.

15 Q. And you both approached Lucha El?

16 A. Correct.

17 Q. He was still standing on the sidewalk?

18 A. Yes.

19 Q. He was talking to two women?

20 A. Yes.

21 Q. The two women were sitting in front of the building that
22 Lucha El was standing in front of?

23 A. Correct.

24 Q. And Lucha El saw you approach him?

25 A. Yes.

N8SBPER2

Smalls - Cross

1 Q. And as you walked toward him, he did not run away?

2 A. No.

3 Q. He didn't start backing away?

4 A. No.

5 Q. He didn't try to hide the bag that he was wearing from you?

6 A. No.

7 Q. Or try to prevent you from looking in the bag?

8 A. No.

9 Q. Let's talk a little bit more about the information that you
10 were responding to. You received this information about a 911
11 call?

12 A. I received a 911 call.

13 Q. You received a radio run describing a 911 call?

14 A. Correct.

15 Q. And the radio run was relaying the information the 911
16 caller described?

17 A. Correct.

18 Q. The dispatcher described a call about a man with a firearm?

19 A. Yes.

20 Q. And gave his location?

21 A. Yes.

22 Q. A description of what he looked like and what he was
23 wearing?

24 A. Yes.

25 Q. There was no mention of an assault?

N8SBPER2

Smalls - Cross

1 A. No.

2 Q. No mention of a shooting?

3 A. No.

4 Q. Nothing about any injuries?

5 A. No.

6 Q. Or any victims?

7 A. No.

8 Q. And you testified that when you were patrolling, you were
9 in the 52nd precinct?

10 A. Yes.

11 Q. And specifically patrolling as part of the public safety
12 team?

13 A. Correct.

14 Q. And as in your role on the public safety team, you were
15 patrolling high crime areas?

16 A. Correct.

17 Q. Areas with gang violence?

18 A. Correct.

19 Q. Assaults?

20 A. Correct.

21 Q. Robberies. And you were specifically patrolling in a high
22 crime area that night?

23 A. We patrol the whole precinct, but we were in that area
24 because of an increase of crime around that time period.

25 Q. So the area was a high crime area that you were patrolling

N8SBPER2

Smalls - Cross

1 in?

2 A. That specific area had a lot of gang violence at that
3 particular time.

4 Q. And that's why you were patrolling there?

5 A. We patrol the whole precinct, but we just happen to be in
6 that area because of the increase of crime.

7 Q. In that specific area where you were patrolling?

8 A. Yes.

9 Q. And that's the area where you arrested Lucha El?

10 A. Yes.

11 Q. You arrested Lucha El in front of a building?

12 A. Yes.

13 Q. On Perry Avenue. It was specifically 3318 Perry Avenue?

14 A. Yes.

15 Q. Which was Lucha El's home address?

16 A. I don't recall his home address.

17 Q. It was the address on the identification card that he gave
18 you?

19 A. I don't recall the address that was on the identification
20 card.

21 Q. Sarah, can you please pull up Government Exhibit 203.

22 Officer Smalls, was this the exhibit we were looking
23 at on your direct testimony?

24 A. Yes.

25 Q. Does that list 3318 Perry Avenue on this ID card?

N8SBPER2

Smalls - Cross

1 A. Yes, it says corner of 3318 Perry Avenue.

2 Q. It says c/o 3318 Perry Avenue?

3 A. Yes, which means corner of.

4 Q. Now I want to turn to talk a little bit about what happened
5 after you handcuffed Lucha El.

6 Sarah, can you pull up Government Exhibit 202A and
7 then play from 1:39 seconds and 1:49 seconds and pause there.

8 (Media played)

9 (Media stopped)

10 Q. This is a clip from your body worn camera footage from that
11 night?

12 A. Yes.

13 Q. It shows you at the beginning of the clip that we just
14 played shining a flashlight?

15 A. Yes, it does.

16 Q. And you're shining the flashlight into Lucha El's bag?

17 A. Yes, I am.

18 Q. And that's to look at the firearm in the bag?

19 A. Correct.

20 Q. You asked Lucha El if he has a permit for it?

21 A. Yes, I did.

22 Q. By "it," you're referring to the gun?

23 A. Yes.

24 Q. And by permit you're asking him if he has a concealed carry
25 permit?

N8SBPER2

Smalls - Cross

1 A. Yes, a permit to carry a handgun.

2 Q. You weren't asking him where he got the gun from?

3 A. No.

4 Q. Or what state the gun was purchased in?

5 A. No.

6 Q. You never asked him where did you get this gun from?

7 A. No, I didn't. It doesn't matter where you got it from. If
8 you don't have a permit from New York State or New York City,
9 you're not allowed to be in possession of it.

10 Q. But you did not ask him that question?

11 A. I asked him if he had a permit. He said no.

12 Q. Thank you. To talk a little bit more about the government
13 you recovered from Lucha El. You recovered the gun from the
14 bag that Lucha El was wearing?

15 A. Correct.

16 Q. It wasn't tucked in his waistband?

17 A. No.

18 Q. Or hidden under his shirt in any way?

19 A. No.

20 Q. And you looked at the gun that night when you looked in his
21 bag?

22 A. Yes.

23 Q. The gun had a serial number on it?

24 A. Correct.

25 Q. The serial number hadn't been filed off?

N8SBPER2

Smalls - Redirect

1 A. No.

2 Q. Or removed in any other way?

3 A. No.

4 Q. And you testified you've been a police officer for several
5 years now?

6 A. Yes.

7 Q. And you've made several gun related arrests in this time?

8 A. Yes, I have.

9 Q. In these gun arrest, you've encountered guns that have no
10 serial numbers?

11 A. Yes, I have.

12 Q. Because they've been filed off?

13 A. Correct.

14 Q. Or they never had any serial numbers in the first place?

15 A. Correct.

16 MS. MAYO: One moment, your Honor. Thank you. No
17 further questions.

18 THE COURT: Any redirect.

19 MS. SMYSER: Just briefly, your Honor.

20 REDIRECT EXAMINATION

21 BY MS. SMYSER:

22 Q. Officer Smalls, on cross-examination you were asked a
23 series of questions about the defendant's bag. Do you recall
24 those?

25 A. Yes.

N8SBPER2

Smalls - Redirect

1 Q. Do you know whether he told you not to touch his bag? Do
2 you recall that?

3 A. During cross or during --

4 Q. During cross-examination were you asked about whether Lucha
5 El tried to hide his bag?

6 A. Yes, I was.

7 Q. Could we just pull up Government Exhibit 201AT. Scroll to
8 the second page, 202AT.

9 Officer Smalls, just looking here at lines five and
10 six, when you all first approached the defendant, what did he
11 say about his bag?

12 A. He said, I'm a Moor. Excuse me. Don't touch me. That's
13 my bag. Don't go in my bag.

14 Q. Officer Smalls, you were asked a series of questions about
15 3318 Perry Avenue on direct examination. Do you recall that?

16 A. Yes.

17 Q. And whether the defendant was standing in front of 3318
18 Perry Avenue?

19 A. Yes.

20 Q. Whether that was his address?

21 A. Correct.

22 Q. Looking at line 16 and 17, when the defendant was initially
23 asked about the building, what did he say?

24 A. I have no idea.

25 MS. SMYSER: Can I have just a moment, your Honor.

N8SBPER2

Smalls - Redirect

1 THE COURT: Yes.

2 MS. SMYSER: Nothing further.

3 THE COURT: Any recross?

4 MS. MAYO: No, your Honor.

5 THE COURT: Thank you very much. You may step down.

6 (Witness excused)

7 THE COURT: Please call your next witness.

8 MS. SMYSER: Your Honor, before we call our next
9 witness, the government has a stipulation that we would like to
10 offer.

11 THE COURT: Okay.

12 MS. SMYSER: This is Government Exhibit 1006. Can we
13 please publish it for the jury. I'm going to start reading the
14 stipulation which is Government Exhibit 1006. Under this
15 stipulation which is now on the screen here, the parties agree
16 that Steven Perez, AKA Lucha, the defendant, has never applied
17 for or been granted a license for a firearm or a firearms
18 dealers license.

19 Government Exhibit 607 is a true and accurate
20 certification produced by the New York City Police Department,
21 NYPD, certifying that a diligent search of the NYPD's License
22 Division Records was conducted, and there are no licensing
23 records in existence for a license for a firearm or a firearms
24 dealers license for Steven Perez, AKA, Lucha, the defendant.
25 The parties agree that this stipulation as well as Government

N8SBPER2

Archuleta- Direct

1 Exhibit 607 are admissible, and your Honor the government would
2 offer 1006 and 607.

3 THE COURT: Received.

4 (Government's Exhibits 1006, 607 received in evidence)

5 MS. SMYSER: Mr. Ahuja, could you please publish
6 Government Exhibit 607 for the jury. Would you just zoom in on
7 the text in the middle. We can take down that exhibit and the
8 government's next witness it would call is Mark Archuleta.

9 MARK ARCHULETA,

10 called as a witness by the Government,

11 having been duly sworn, testified as follows:

12 THE DEPUTY CLERK: Please state your name and spell it
13 for the record.

14 THE WITNESS: My name is Mark Archuleta, M-A-R-K
15 A-R-C-H-U-L-E-T-A.

16 DIRECT EXAMINATION

17 BY MS. SMYSER:

18 Q. Good afternoon, Mr. Archuleta.

19 A. Good afternoon.

20 Q. Where do you work?

21 A. I work for Western Union Financial Services Incorporated.

22 Q. How long have you worked for Western Union?

23 A. Just about 20 years.

24 Q. What is your current title there?

25 A. My current title is senior specialist officer of consumer

N8SBPER2

Archuleta- Direct

1 monitoring and investigations.

2 Q. What are some of your responsibilities as senior
3 specialist?

4 A. My basic responsibility is transaction monitoring.

5 Q. What do you mean by transaction monitoring?

6 A. We monitor transaction, both money transfer and money order
7 for suspicious activity.

8 Q. What are some of the other roles that you've held at
9 Western Union?

10 A. I worked in regulatory exam management, law enforcement
11 outreach and investigations, corporate security, research and
12 reporting, and now I'm at my current role.

13 Q. Are those all in kind of a particular group at the company?

14 A. Yes, it all falls under the umbrella of anti-money
15 laundering.

16 Q. What kind of company is Western Union?

17 A. Western Union is a money service business is the
18 classification. The main thing we do is move money around the
19 world.

20 Q. Are you familiar with Western Union records that document
21 those money transfers?

22 A. Yes.

23 Q. What are some of the ways that you can transfer money with
24 Western Union?

25 A. A few of the ways are you can go to like a Brick and

N8SBPER2

Archuleta- Direct

1 Mortar, certain grocery stores, liquor stores, convenient
2 stores, and do a location to location; or you can transfer it
3 from a bank to a bank or consumer to a bank, mobile wallets as
4 well.

5 Q. I want to focus on going into a Brick and Mortar store and
6 sending money for a moment.

7 What kind of information is a sender of money required
8 to provide when they go into a Brick and Mortar store?

9 A. Depending on the amount, you're asked to provide an ID
10 either way. Sometimes the clerk can just take the information
11 for the sender such as name, address, phone number off of an
12 ID.

13 Q. What is that money threshold that you just mentioned?

14 A. A thousand dollars.

15 Q. So if it is above a thousand dollars, what happens?

16 A. They're required to input that information into our point
17 of sale system which actually facilitates the transfer.

18 Q. If it's under thousand dollars, are they required to input
19 that information?

20 A. Not required to input it, but they are asking to look at
21 the ID to verify the individual sending the money.

22 Q. Under Western Union policy, they still have to request and
23 inspect the identification of the sender?

24 A. Yes, ma'am.

25 Q. What about the person who's picking up the money, what do

N8SBPER2

Archuleta- Direct

1 they have to show?

2 A. They would have to provide a valid ID because we need to
3 know who we're paying the funds to.

4 Q. Is that regardless of the amount that is sent?

5 A. Yes.

6 Q. What kind of identification do they have to show?

7 A. Usually it's a driver license or state issued ID or you can
8 use a passport as well.

9 Q. Mr. Ahuja, could you please display for the witness only
10 what's been marked for identification as Government Exhibit
11 803.

12 Mr. Archuleta, do you see this document?

13 A. Yes.

14 Q. Do you recognize it?

15 A. Yes.

16 Q. What is it?

17 A. This is a money transfer transaction grid.

18 Q. Was this grid created, kept and maintained by Western Union
19 as a record of its regularly conducted activities?

20 A. Yes.

21 Q. Was it created by persons with knowledge of or from
22 information transmitted by people with knowledge of the
23 information that's contained in this document?

24 A. Yes.

25 Q. And was it created at or near the time of the transaction

N8SBPER2

Archuleta- Direct

1 when that information became available?

2 A. Yes.

3 MS. SMYSER: Your Honor, the government offers
4 Government Exhibit 803.

5 MS. MAYO: No objection.

6 THE COURT: Received.

7 (Government's Exhibit 803 received in evidence)

8 MS. SMYSER: May we publish it?

9 THE COURT: Yes.

10 Q. Mr. Ahuja, could you please publish Government Exhibit 803
11 and turn to the tab that's marked Keith Vereen.

12 Mr. Archuleta, have you reviewed this document?

13 A. Yes.

14 Q. Before we go through this log in detail, I just want to ask
15 you at a high level what's contained in that?

16 A. This would be sender and payee information that was
17 captured during the transactions. It also contains the
18 location where the transactions were conducted.

19 Q. So it's about several money transfers?

20 A. Yes.

21 Q. And now I'd like to walk through some of this table.

22 First, I'd like to direct your attention to column D.
23 What information is contained in column D?

24 A. Column D contains the sender's name.

25 Q. And who sent money as reflected in this spreadsheet?

N8SBPER2

Archuleta- Direct

1 A. Steven Perez, Ricardo Rodriguez Resto and Jamil Bey.

2 Q. Can you tell how much money they sent?

3 A. Yes. In column B it has the sender amount in U.S. dollars.

4 Q. How much money did Mr. Perez send?

5 A. \$350.

6 Q. What about Mr. Rodriguez?

7 A. \$911.

8 Q. And Mr. Bey?

9 A. \$600.

10 Q. What does column A show?

11 A. Column A is the Western Union money transfer fee that was
12 charged along with the principal amount.

13 Q. Is that fee included in the amount that is transferred to
14 the recipient or not?

15 A. No.

16 Q. I want to direct your attention to columns G and H.

17 What information is contained in these columns?

18 A. G and H contain the send date, the day the transaction was
19 initiated.

20 Q. When did Perez send money?

21 A. 9/22 of 2020.

22 Q. At what time?

23 A. 07:15 a.m. eastern standard time.

24 Q. So this log is in eastern standard time?

25 A. Yes.

N8SAAPER5

Archuleta - Direct

1 BY MS. SMYSER:

2 Q. What about Mr. Rodriguez?

3 A. 9/12 of 2020 at 1619 hours which would be 4:19 in the
4 afternoon, Eastern Standard Time.

5 Q. Finally, Mr. Bey?

6 A. 9/12/2020, 1538 hours which would be 3:38 p.m. Eastern
7 Standard Time.

8 Q. Looking at Column C, what does this column reference?

9 A. Column E.

10 Q. "C", sorry.

11 A. "C" contains the money transfer control number which is a
12 transaction identifier assigned by Western Union.

13 Q. What is that number used for in the transaction?

14 A. It's to identify the transaction and it's also information
15 for the sender to pass along to the receiver or payee
16 identifying the transaction.

17 Q. Would you please look at Column F. What is contained in
18 this column?

19 A. That would be the sender's phone number that was provided
20 at the time of the transaction.

21 Q. What is the phone number for Mr. Perez?

22 A. 347-251-1561.

23 Q. For Mr. Rodriguez?

24 A. 646-875-1041.

25 Q. For Mr. Bey?

N8SAAPER5

Archuleta - Direct

1 A. 914-800-4171.

2 Q. I want to scroll on this table to Columns P through S.
3 What kinds of information are contained in these columns
4 Mr. Archuleta?

5 A. This would be the -- you said "P" through "S"?

6 Q. "P" through "S".

7 A. Okay. That is the sender's address, the send city and send
8 state and the send zip code.

9 Q. What is the address for Mr. Perez in the first line?

10 A. 3318 Perry Avenue.

11 Q. In what city?

12 A. Bronx, New York.

13 Q. What about for Mr. Rodriguez in the second line?

14 A. 3556 Webster Avenue again, Bronx, New York.

15 Q. Finally, for Mr. Bey in the third line?

16 A. 2759 Webster Avenue again, Bronx, New York.

17 Q. Now I want to turn to Columns AN through AR.

18 (Pause)

19 Q. What is contained in these columns?

20 A. This is the Western Union agent location where the money
21 transfer was initiated.

22 Q. So where did Mr. Perez send the payment from?

23 A. Pay-O-Matic location number 201 11 East Gun Hill Road in
24 Bronx, New York.

25 Q. Mr. Rodriguez?

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Archuleta - Direct

1 A. Pay-O-Matic number 242339, East Gun Hill Road in the Bronx,
2 New York.

3 Q. What about Mr. Bey?

4 A. Pay-O-Matic number 242339, East Gun Hill Road, again,
5 Bronx, New York.

6 Q. I want to scroll back in the log to Column W. What kind of
7 information is contained in the Column W?

8 A. Welcome. "W" is the payee's name is the receiver of the
9 money transfer funds.

10 Q. Did Mr. Perez, Mr. Rodriguez and Mr. Bey send money to the
11 same person here?

12 A. Yes.

13 Q. Who was that person?

14 A. Keith Vereen.

15 Q. I want to look now at Column Y. What is contained in that
16 column?

17 A. That is the payee's phone number.

18 Q. What is Mr. Vereen's phone number?

19 A. 1-843-460-0166.

20 Q. Now let's turn to Columns AG through AJ. What information
21 is in these columns?

22 A. This is the payee location address for the Western Union
23 location where the one transfer was picked.

24 Q. Is it for the Western Union location or recipient address?

25 A. Yes. It's for the payee address which is the recipient.

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Archuleta - Direct

1 Q. What is Mr. Vereen's address in line one?

2 A. Pridgen Road, Unit 16.

3 Q. In what city?

4 A. Myrtle Beach, South Carolina.

5 Q. What about the address in line two?

6 A. 1211 Pridgen Road, Unit 16.

7 Q. Line three?

8 A. 1211 Pridgen Road.

9 Q. Next let's turn to columns AU through AY.

10 (Pause)

11 Q. What is in these columns?

12 A. This is the Western Union agent location name.

13 Q. And its address?

14 A. Yes, address and city and state where it is located.

15 Q. Where did Mr. Vereen pick up the first two pavements?

16 A. At Food Lion number 1468, 1430 South Kings Highway in
17 Myrtle Beach, South Carolina.

18 Q. What about that last payment?

19 A. That would be Food Lion number 1202, Food Lion Myrtle
20 Beach, South Carolina.

21 Q. Finally, can we turn to Columns AD and AE.

22 (Pause)

23 Q. What is contained in these columns, Mr. Archuleta?

24 A. This is the payee's ID type and payee's ID number that
25 we're associated with the transaction pick up.

N8SAAPER5

Archuleta - Cross

1 Q. So what does that mean?

2 A. This means that the identification numbers provided at the
3 time the funds were received.

4 Q. What kind of identification did Mr. Vereen provide?

5 A. Payee ID type number one is a state issued driver's
6 license.

7 MS. SMYSER: Your Honor, may we just have a moment?

8 THE COURT: Yes.

9 (Pause)

10 MS. SMYSER: No further questions.

11 THE COURT: Cross-examination?

12 MS. MAYO: Thank you, your Honor.

13 CROSS-EXAMINATION

14 BY MS. MAYO:

15 Q. Good afternoon, Mr. Archuleta.

16 A. Good afternoon.

17 Q. You were asked by the prosecutors to review specific
18 transactions in this case?

19 A. Yes.

20 Q. Review the three transactions that you went through on that
21 spread sheet?

22 A. Yes.

23 Q. These were not, you were not personally familiar with these
24 records before you testified?

25 A. Not personally, no.

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Archuleta - Cross

1 Q. They weren't flagged independently by Western Union as
2 "suspicious activity"?

3 A. Initially.

4 Q. Western Union did not raise an anti money laundering
5 concern or suspicious activity concern?

6 A. Not to my knowledge.

7 Q. You were asked to examine the record for purposes of this
8 trial?

9 A. Yes.

10 Q. To explain how the money transferred worked?

11 A. Yes.

12 MS. MAYO: One moment, your Honor?

13 THE COURT: Yes.

14 (Pause)

15 MS. MAYO: Thank you. No further questions.

16 THE COURT: Anything else?

17 MS. SMYSER: Nothing further from the government.

18 THE COURT: Thank you. You may step down.

19 Please call your next witness.

20 MS. NICHOLAS: Your Honor, before the government calls
21 its next witness we have two stipulations to offer.

22 First, your Honor, we'd be offering Government Exhibit
23 101 which is a stipulation between the parties that in
24 Paragraph One Steven Perez, a/k/a "Lucha", the defendant, was
25 at all relevant times a resident of New York State. Defendant

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Archuleta - Cross

1 is not, nor has he ever been a licensed importer, licensed
2 manufacturer or licensed dealer of firearms.

3 Paragraph Two, Government Exhibits 400 through 408 are
4 true and accurate Blue Ribbon certifications produced by the
5 Bureau of Alcohol Tobacco firearms and Explosives, the ATF,
6 certifying that a diligent search of ATF's records were
7 conducted and there are no license records in existence for
8 with for the license importation, manufacturer or dealing of
9 firearms by any of the following individuals.

10 Steven Perez, a/k/a "Lucha", Keith Vereen, Lamar Dow,
11 a/k/a "Jamil Bey", "Jamal Latimer, a/k/a "Jahmal Bey", Brandon
12 Britton, a/k/a "Messiah Bey", Quinn Cumberlander, a/k/a "Quinn
13 Khabir", Aaron Jiminez, a/k/a "Alban El Currah" and Ricardo
14 Rodriguez.

15 It is further stipulated and agreed that this
16 stipulation may be marked as Government Exhibit 1001 and that
17 Exhibits 400 through 408 are admissible and may be received in
18 evidence at trial.

19 At this time, the government offers Government
20 Exhibits 1001, as well as Government Exhibits 400 through 408.

21 THE COURT: Received.

22 (Government's Exhibits 1001, 400 - 408 received in
23 evidence)

24 MS. NICHOLAS: Next, your Honor, the government would
25 like to offer Government Exhibit 1004 which is an additional

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Gordon - Direct

1 stipulation between the parties.

2 (Stipulation read)

3 THE COURT: Received.

4 (Government's Exhibits 1004, 411 - 422 and 430
5 received in evidence)

6 MS. NICHOLAS: With that, your Honor, the government
7 calls Special Agent Lennea Gordon.

8 LENNAE GORDON,

9 called as a witness by the Government,

10 having been duly sworn, testified as follows:

11 COURTROOM DEPUTY: Please state and spell your name
12 for the record.

13 THE WITNESS: Lennea Gordon, L-e-n-n-e-a, G-o-r-d-o-n.

14 DIRECT EXAMINATION

15 BY MS. NICHOLAS:

16 Q. Good afternoon.

17 A. Good afternoon.

18 Q. Special Agent Gordon, where do you work?

19 A. I work at the Bureau of Alcohol Tobacco, Firearms and
20 Explosives, New York Field Division.

21 Q. Is that also known as the "ATF"?

22 A. Yes, it is.

23 Q. What is your title at the title ATF?

24 A. Special agent.

25 Q. Do you have any particular assignment as a special agent

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Gordon - Direct

1 with the ATF?

2 A. Yes. I am currently assigned to the New York Group Two
3 Office.

4 Q. We are going to return to your current job in a moment. Is
5 this your first job in law enforcement?

6 A. No, it is not.

7 Q. What other jobs in law enforcement have you held?

8 A. I was previously a special agent with the U.S. Department
9 of States Bureau of Diplomatic Security.

10 Q. What is the U.S. Department of States Bureau of Diplomatic
11 Security?

12 A. It is the law enforcement wing of the U.S. Department of
13 State.

14 Q. Was your title also a special agent?

15 A. Yes, it was.

16 Q. How long were you a special agent what the Department of
17 State?

18 A. Approximately, five years.

19 Q. Now to become a special agent at the Department of State do
20 you have to go through any particular training?

21 A. Yes, you do.

22 Q. Do you have to go to multiple schools?

23 A. Yes, you do.

24 Q. What's the first school in that pipeline?

25 A. The first school is the criminal investigator training

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Gordon - Direct

1 program, also referred to as CITP.

2 Q. So let's talk about CITP for a second. Where is CITP
3 located?

4 A. It is located in Brunswick, Georgia at the Federal Law
5 Enforcement Training Center, also referred to as a FLETC.

6 Q. Approximately, how long is CITP?

7 A. Approximately, three months.

8 Q. In general terms can you describe what kind of training a
9 special agent in training experiences when they're at CITP?

10 A. Yes. They receive training in federal laws. They receive
11 training in criminal investigations, in firearms, defensive
12 tactics and physical fitness training.

13 Q. Now, as a DSS agent did you personally carry a firearm?

14 A. Yes, I did.

15 Q. Did you train and qualify with that firearm?

16 A. Yes, I did.

17 Q. Was there a time when you were assigned to DSS as A special
18 agent when you were responsible for training of others with
19 firearms?

20 A. Yes, there was.

21 Q. Can you briefly describe what that job was?

22 A. I was posted to the United States Embassy in Kuwait City,
23 Kuwait. As part of my duties there I was a firearms range
24 safety officer and I would oversee the firearms training and
25 certification programs for our locally employed staff and also

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Gordon - Direct

1 for the main security guards that were also present at the
2 embassy.

3 Q. When you introduced yourself at the beginning of your
4 testimony you said you are an ATF special agent.

5 A. That's correct.

6 Q. When did you transition from the state department to the
7 ATF?

8 A. I believe it was the summer of 2018.

9 Q. Now, did you have to undergo any additional training when
10 you made that transition?

11 A. Yes, I did.

12 Q. Did you have to attend any particular schools?

13 A. Yes, I did.

14 Q. What schools did you attend?

15 A. I attended the ATF special agent basic training course.

16 Q. If I call that "SABT", will you know what I am taking
17 about?

18 A. Yes.

19 Q. Where is that held?

20 A. The ATF National Academy which is also in Brunswick
21 Georgia.

22 Q. About how long is SABT?

23 A. Approximately, three months.

24 Q. When one attends SABT, what types of things are you
25 learning ABOUT?

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Gordon - Direct

1 A. Learning the details OF federal firearms laws AND also the
2 other ATF portfolios which would include arson AND explosives
3 and you're also learning advanced firearms instruction and also
4 defensive tactics.

5 Q. Now did some of that training happen on gun ranges?

6 A. Yes.

7 Q. Is some of it also in a classroom?

8 A. Yes.

9 Q. Can you describe what some of the topics you may learn
10 about in this classroom setting?

11 A. Yes. Significant amount on firearms investigations,
12 firearms trafficking investigations, arson and the like.

13 Q. Now, between your time training to become a DSS special
14 agent and your time training you become an ATF special agent,
15 how much time would you estimate you've spent training with
16 firearms?

17 A. Hundreds of hours.

18 Q. When did you graduate from SABT?

19 A. Approximately, the fall of 2018.

20 Q. Once you graduate from SABT are you an ATF special agent?

21 A. Yes, you are.

22 Q. Once you became an ATF special agent where did you report
23 for your first assignment?

24 A. My first assignment with ATF was to the San Diego field
25 office in San Diego, California.

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Gordon - Direct

1 Q. What did you do there?

2 A. I investigated illegal possession of firearms and also
3 firearms trafficking.

4 Q. Approximately, how long did you have that assignment?

5 A. Approximately, three years.

6 Q. After you completed your assignment in San Diego, where
7 were you next assigned?

8 A. To the New York Field Division.

9 Q. When you arrived at the New York Field division, what was
10 your first assignment?

11 A. My first assignment was to the ATF New York Crime Gun
12 Intelligence Center.

13 Q. How does the ATF refer to the crime gun --

14 A. We refer to it as CGIC.

15 Q. Once you are assigned to CGIC, what sorts of things were
16 you doing there?

17 A. I was assisting in intel analysis and in providing agents
18 in the field with support.

19 Q. Just at a high level, what is the mission of CGIC?

20 A. The CGIC is, at a high level it identifies firearms that
21 have been recovered in and around New York City and analyzes
22 those firearms and looks for indicators that those firearms may
23 have been trafficked into the city and looks for investigative
24 opportunities, I would say.

25 Q. After you finished your assignment with the CGIC did you

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Gordon - Direct

1 have another job with the New York Field Division?

2 A. Yes, I did.

3 Q. Is that the job you are currently in?

4 A. Yes, it is.

5 Q. Could you just briefly describe what your duties and
6 responsibilities are in your current job?

7 A. Yes. In the New York Group Two Office, also known as the
8 Joint Firearms Task Force, I primarily focused on firearms
9 trafficking into New York City.

10 MS. NICHOLAS: Your Honor, at this time the government
11 offers Special Agent Gordon's testimony under Rule 702.

12 THE COURT: You don't need to do that in front of the
13 jury but that is acceptable to the Court.

14 MS. BAHARANYI: Your Honor, I would just note our
15 previous standing objection.

16 THE COURT: Yes.

17 Q. When you are doing investigations as an ATF special agent,
18 do you sometimes visit gun stores?

19 A. Yes.

20 Q. Let's talk again by talking a bit about gun stores. Is
21 there a term that the ATF uses to refer to gun stores?

22 A. Yes, there is.

23 Q. What is that term?

24 A. An FFL.

25 Q. What does that stand for?

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Gordon - Direct

1 A. A "federal firearms licensee".

2 Q. Okay. What is a federal firearm license?

3 A. A federal firearm licensee is what the public would
4 generally know as a gun store. It is a place of business that
5 is authorized by ATF to sell firearms as their course of
6 business.

7 Q. Now are FFLs subject to any particular ATF requirements?

8 A. Yes, they are.

9 Q. Okay. Can you describe some of those requirements?

10 A. When selling firearms they are required to have the
11 purchaser fill out the ATF form 4473. They're required to
12 report some of their information and maintained their records.

13 Q. We are going to come back at 4473 in a second. When an FFL
14 is selling a firearm do they have any obligations to check
15 identifications?

16 A. Yes, they do.

17 Q. Now, does the ATF maintain a record of who authorizes or
18 who's authorized to be an FFL?

19 A. Yes, they do.

20 Q. Does the ATF have a way to verify that a person or business
21 has received an FFL?

22 A. Yes, they do.

23 Q. In front of you just to your right there's a manila
24 envelope with a series of documents in it. Do you see that?

25 A. Yes.

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Gordon - Direct

1 Q. Those are in evidence as Government Exhibits 400 to 408.
2 Can you flip through those for a moment.

3 (Pause)

4 A. Yes.

5 Q. Are you familiar with those documents?

6 A. Yes, I am.

7 Q. What are those?

8 A. ATF Blue Ribbon certificates.

9 MS. NICHOLAS: Can you please publish what's in
10 evidence as Government Exhibit 400.

11 (Pause)

12 Q. You just described this as a Blue Ribbon certificate. What
13 is this document in layman's terms?

14 A. This is a document that verifies whether or not an
15 individual has registered with the ATF.

16 MS. NICHOLAS: Could you go to page two, please.

17 (Pause)

18 Q. Special Agent Gordon, I am going to have you read the
19 paragraph that begins with "I do hereby certify".

20 A. Yes. I do hereby certify that I made a diligent search of
21 said records and that no record or entry was found therein with
22 respect to the application for or issuance of a firearms
23 license to Steven Perez, a/k/a "Lucha", at any address in the
24 50 states of the United States and its territories for the time
25 period of January 1, 2020 through August 1, 2021.

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Gordon - Direct

1 Q. Thank you. Shifting gears just a little bit to talk more
2 particular about the mechanics of a gun sale.

3 You mentioned earlier that -- you testified earlier
4 that FFLs are required to check IDs and administer 4473s; is
5 that correct?

6 A. Yes.

7 Q. Why are FFL required to check IDs?

8 A. To verify the individual is who they purport to be and that
9 they are also, and also to check residency.

10 Q. There are also state requirements that FFLs are mandated to
11 follow?

12 A. Yes, there are.

13 Q. Generally speaking, do those requirements vary between
14 states?

15 A. Yes, they do.

16 Q. Are there some states that require license to purchase a
17 firearm?

18 A. Yes.

19 Q. I want to turn specifically to the ATF form 4473. Is there
20 another name for that form?

21 A. Yes, there is.

22 Q. What name is that?

23 A. The firearms transaction record.

24 Q. What's the purpose of the 4473?

25 A. The purpose of the 4473 is to determine that the purchaser

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Gordon - Direct

1 is lawfully permitted to possess the firearm.

2 Q. Who fills out the 4473?

3 A. The purchaser fills out certain sections and then the FFL
4 employee will fill out other sections.

5 Q. And does the FFL have to make sure that 4473 is filled out
6 at the time of every gun sale at an FFL?

7 A. Yes.

8 Q. Now, after the 4473 is filled out where is it stored?

9 A. The FFL is responsible for maintaining those records.

10 Q. And are those records subject to inspection by the ATF?

11 A. Yes, they are.

12 Q. Now, if a gun dealer fails to comply with he requirements
13 that are set forth in the 4473, can there be consequences for
14 that FFL?

15 A. Yes, there can.

16 Q. What sorts of things?

17 A. Those consequences can be up to and including the
18 revocation of their FFL license.

19 MS. NICHOLAS: Ms. Sankar, can you please publish
20 what's in evidence as Government Exhibit 413.

21 (Pause)

22 Q. Special Agent Gordon, what's on the screen?

23 A. This is what ATF refers to as a form 4473, the firearms
24 transaction record.

25 Q. Okay. Without talking about any specific sections, can you

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Gordon - Direct

1 just broadly explain what the form is that we're looking at?

2 A. Yep. So this is the form that the gun store or that an
3 individual when making a firearms purchase will fill out at a
4 gun store.

5 Q. Now, are you aware of any changes that have been made to
6 the form over time?

7 A. Yes.

8 Q. Okay. Are you aware of what the effective date of the
9 particular form we're looking at in Government Exhibit 413 is?

10 A. Yes.

11 Q. What's the date on that form?

12 A. 2016.

13 Q. This is the 2016 version of the 4473?

14 A. Yes, it is.

15 MS. NICHOLAS: Okay. Ms. Sankar, can you please
16 publish what's in evidence as Government Exhibit 418.

17 (Pause)

18 Q. Can you see Government Exhibit 418 in front of you, Special
19 Agent Gordon?

20 A. Yes, I can.

21 Q. What is the effective date on Government Exhibit 418?

22 A. May 2020.

23 MS. NICHOLAS: Ms. Sankar, can you please place 413
24 side-by-side with 418.

25 (Pause)

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Gordon - Direct

1 Q. So these are two versions of the same form?

2 A. Yes.

3 Q. What are the major differences in the two versions?

4 A. So if you look at form 413, you can see that the initial
5 biographical information, the name and information about the
6 purchaser is at the very top. Whereas, if you look at 418, the
7 firearm date is moved. So, basically, the placement and the
8 ordering of the information contained within the has been moved
9 around a little bit for ease of reference.

10 MS. NICHOLAS: We're going to begin by talking about
11 the older investigation. We are going to look at Government
12 Exhibit 413 a little more in depth.

13 Can you publish Government Exhibit 413.

14 (Pause)

15 MS. NICHOLAS: Begin by focusing on Section A and
16 zoom-in.

17 (Pause)

18 Q. We'll go back and talk about the specifics in a moment, but
19 in Section A can you just describe the type of information that
20 is required from the purchaser in this section?

21 A. So, this is the information on the purchaser. This would
22 be the name, their current address, their place of birth,
23 height, weight, sex, birthday, Social Security optional.

24 Q. Who is providing that information?

25 A. This is completed by the purchaser.

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Gordon - Direct

1 MS. NICHOLAS: Ms. Sankar, if you could zoom back out.

2 (Pause)

3 Q. Now we are going to look at Question 11, this middle
4 section of the form.

5 What's this middle section here?

6 A. These are questions that are intended to determine whether
7 or not the individual purchasing the firearm is legally
8 permitted to possess a firearm.

9 Q. We are going to come back to this in a second but when
10 someone is filling out a 4473, does the law require them to
11 provide information truthfully?

12 A. Yes, it does.

13 Q. I am going to draw your attention to the question in Box 11

14 A. Can you read that question?

15 A. Yes. Are you the actual transferee/buyer of the firearms
16 listed on this form? Warning: You are not the actual
17 transferee/buyer, if you are requiring the firearms on behalf
18 of another person, if you are not the actual transferee/buyer,
19 the licensee cannot transfer the firearms to you. Exception:
20 If you are picking up a repaired firearms for another person,
21 you are not required to answer AA and may proceed to question
22 11B.

23 MS. NICHOLAS: We can zoom back out and go to page
24 two.

25 (Pause)

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Gordon - Direct

1 Q. We're going to zoom in that top section all the way down to
2 just above box 16.

3 (Pause)

4 Q. Special Agent Gordon, what is the purpose of this section?

5 A. This is the certification box that the purchaser will
6 complete that certifies that everything that they have said on
7 the form in the previous section is true, correct and complete.

8 Q. I'd like to have you read about halfway through the
9 paragraph after the sentence ending in 18C begins "I also
10 understand".

11 A. Yes.

12 Q. Read from there to the end?

13 A. "I also understand that making any false oral or written
14 statement or exhibiting any false or misrepresented
15 identification with respect to this transaction is a crime
16 punishable as a felony under federal law and may also violate
17 state and/or local law. I further understand that the
18 repetitive purchase of firearms for the purpose of resale for
19 livelihood and profit without a federal firearms license is a
20 violation of federal law."

21 Q. Then there's a signature in box 14. Who signs box 14?

22 A. The purchaser.

23 Q. Okay. The person buying the gun?

24 A. Yes.

25 MS. NICHOLAS: Ms. Sankar, we can zoom back out.

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Gordon - Direct

1 (Pause)

2 Q. Box 18A, what information is required there?

3 A. A government issued identification.

4 Q. Is this the information associated with the ID that was
5 presented?

6 A. Yes.

7 MS. NICHOLAS: Zooming back out, Ms. Sankar, go to the
8 next page.

9 (Pause)

10 Q. I want to focus here on Section D.

11 Special Agent Gordon, if you could just walk us
12 through the type of information that goes into boxes 24, 25,
13 26, 27, and 28.

14 A. Yes. So 24 is manufacture and importer; 25 is model; 26 is
15 the serial number; 27 is the type of firearm; and 28 is the
16 caliber or gauge.

17 Q. Where is this information coming from?

18 A. This is coming from the firearms, the FFL employee.

19 Q. Is this information for the gun at issue in that particular
20 transaction?

21 A. Yes.

22 MS. NICHOLAS: Ms. Sankar, zoom back out. I want to
23 go down to box 33.

24 (Pause)

25 Q. What information is contained in box 33?

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Gordon - Direct

1 A. This is the information on the FFL. So it would be their
2 business name, their address and then also their FFL number.

3 Q. Is that FFL number a unique number to that particular gun
4 store?

5 A. Yes, it is.

6 MS. NICHOLAS: Okay. Zoom back out. Thank you.

7 Q. Who signs in box 34 after the form is completed, signs in
8 box 35 after the form is completed?

9 A. That is completed by the FFL employee conducting the sale
10 and/or transfer.

11 MS. NICHOLAS: Okay. Ms. Sankar, could you please
12 publish what's in evidence as Government Exhibit 418.

13 (Pause)

14 Q. Now, I'm not going to walk back through every box on the
15 updated form but there are a few things I want to talk about.
16 On the updated form that's Government Exhibit 418, boxes one,
17 two, three, four and five. What are those boxes?

18 A. Those are the manufacture and importer in box one; box two,
19 the model; box three, the serial number; box four is the type
20 of firearm; and box five is the caliber or gauge.

21 Q. Is that the same information that was in boxes 24 to 28 of
22 the old form?

23 A. Yes, it was or yes, it is.

24 MS. NICHOLAS: Ms. Sankar, zoom back out and go to
25 page two please.

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Gordon - Direct

1 (Pause)

2 Q. Just below Question 21.1.2 is there in the new form the
3 same certification as the old form?

4 A. Yes.

5 Q. Which is to say the same obligation for truthfulness apply
6 to the new form as the old form?

7 A. Yes.

8 MS. NICHOLAS: Okay. Focusing on a couple particular
9 things for this form, Government Exhibit 418, Ms. Sankar, if
10 you could go back to the first page.

11 (Pause)

12 Q. Who is the purchaser in this particular transaction?

13 A. The purchaser in this particular transaction is Keith
14 Anthony Vereen.

15 Q. Can you just read the firearms that were purchased during
16 this transaction?

17 A. Yes. It appears to be a Janic TP9 pistol. The Janic, I
18 should say is referred as a law enforcement personnel, a Canic
19 and then also a Taurus PT pistol.

20 Q. The first firearm, the Janic or Canic, can you read the
21 serial number on that firearm?

22 A. Yes. It is 20CB25810.

23 Q. Now, special agent Gordon, do you see in front of you an
24 item marked as Government Exhibit 520 which should be directly
25 in front of you?

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Gordon - Direct

1 A. Yes.

2 Q. Grab that. What is Government Exhibit 520?

3 A. This is Janic pistol.

4 Q. Do you see a serial number on that particular pistol?

5 A. Yes, I do.

6 Q. Okay. Can you read the serial number from Government
7 Exhibit 520?

8 A. 20CB25810.

9 Q. OK. Does that match the serial number listed for weapon
10 number 1 on this firearms transaction, Government Exhibit 418?

11 A. Yes, it does.

12 Q. Let's talk about serial numbers just for a quick second.
13 Is the serial number a unique identifier for a particular
14 firearm?

15 A. In combination with the make and model of the firearms,
16 yes.

17 Q. What, if any, value does a serial number have to the ATF?

18 A. That enables the ATF to determine the original purchaser of
19 firearm and also to query whether or not it was part of a
20 multiple sale purchase.

21 Q. Before we move on, I want to take a closer look at one more
22 form, 4473, and that's Government Exhibit 413. Government
23 Exhibit 413, who is the buyer?

24 A. Keith Anthony Vereen.

25 MS. NICHOLAS: Going to page two, Ms. Sankar.

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Gordon - Direct

1 (Pause)

2 MS. NICHOLAS: One more page, page three, please.

3 (Pause)

4 Q. Can you read the descriptors for that firearm?

5 A. Yes. It had this is Glock 44 pistol bearing serial
6 ACLY222.

7 Q. What was the date of transfer for that firearm?

8 A. The date of transfer is 72320. I think that's zero 2020.

9 MS. NICHOLAS: You can pull that down.

10 (Pause)

11 Q. Special Agent Gordon, I want to shift gears just a little
12 bit for a second.

13 Are you familiar with the concept of straw purchasing?

14 A. Yes, I am.

15 MS. BAHARANYI: Objection, your Honor.

16 THE COURT: For the reasons already described outside
17 the presence of the jury the objection is overruled.

18 Q. What is straw purchasing?

19 A. Straw purchasing is where one individual buys a firearm for
20 another person.

21 Q. The 4473, the form we have been looking at requires that
22 the type of firearm be reported; is that correct?

23 A. Yes, it does.

24 Q. Are there any red flags as it relates to the types of
25 firearms the ATF looks for when trying to identify straw

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1 purchasers?

2 A. Yes. Multiples of the same type of firearm.

3 Q. Why is that a red flag?

4 A. Individuals purchasing multiple firearms especially if it's
5 the same make, model and caliber of a firearm that typically
6 indicates that us that the firearm is not destined for a
7 collector or it's not for the individual. People typically
8 don't buy duplicates of an item for themselves.

9 Q. Special Agent Gordon, are you familiar with the E-trace
10 System?

11 A. Yes, I am.

12 Q. What's the E-trace system?

13 A. The E-trace System is a database maintained by the ATF's
14 national tracing system.

15 Q. A system you've personally used before?

16 A. Yes.

17 Q. What type of reports does the E-trace system generate?

18 A. It generates price reports and also multiple sales
19 summaries.

20 Q. What's multiple sales summary?

21 A. It is a report that shows if an individual purchases two or
22 more of a specific type of firearm within a set period of time.

23 Q. Now, who supplies the information that the ATF inputs into
24 the E-trace System to generate a multiple sales summary?

25 A. That's the FFL.

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1 Q. So the gun store?

2 A. Yes.

3 Q. Now, does the FFL have an obligation to report that
4 information to the ATF?

5 A. Yes, they do.

6 Q. In front of you there's a binder. Do you see that?

7 A. Yes.

8 Q. There's a tab marked as Government Exhibit 426. Can you
9 flip to that for me?

10 A. Yes.

11 Q. Just look at me when you are there.

12 A. Yes.

13 Q. Do you recognize this?

14 A. I do.

15 Q. What is that?

16 A. This is a multiple sales.

17 MS. BAHARANYI: Your Honor, at this point we have an
18 objection but we'd like to approach the bench.

19 THE COURT: Okay.

20 (Continued on next page)

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22

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1 (side bar)

2 MS. BAHARANYI: Your Honor, we're about to embark on a
3 line of questioning that is based on the witness, not based on
4 witness's actual knowledge of the source of the underlying
5 documents, the R & R forms, purchase forms. This witness is an
6 ATF agent. Where I predict the government is going to be going
7 is starting to talk about the R & R., FFL in this particular
8 case which is R & R and how they kept their forms and how they
9 kept the information and what information they said when she is
10 not an employee of R & R. She has not spoken to anyone in R &
11 R, has no basis in knowledge to admit any information from R &
12 R and put that before the jury. Nor can she establish a
13 foundation for any R & R records, meaning -- business record or
14 I want to get in front of before --

15 MS. NICHOLAS: This is the Government Exhibit 426. It
16 is an ATF form that was pulled by this witness today from the
17 ATF E-trace system. These forms are generated as a matter of
18 course by the ATF, not in preparation for any particular event
19 but as a matter of regular conducted business of the ATF. The
20 information contained herein is provided by an FFL in the
21 regular course of business with an obligation to provide
22 truthful information to the FFL. It adopts business records
23 of --

24 MS. BAHARANYI: If I can point to a couple things on
25 this form, your Honor. This is a form that was prepared in

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1 testimony for today and prepared in connection to an ongoing
2 law enforcement investigation. I think this is a form that is
3 certainly testimonial in the nature and should not qualify as a
4 business record and moreover it's based on information from
5 another party R & R public safety. This is a party that we've
6 learned from the government they've closed down. They are no
7 longer in business. So the ability of this witness to talk
8 about R & R keeping of records whether these records are
9 regularly conducted, whether they're trustworthy is limited
10 because she's never spoken to R & R. Moreover --

11 THE COURT: Wait a minute. Let me see.

12 MS. NICHOLAS: I also want to point something else
13 out. The information was created in a database on December
14 16th of 2020. The data business report was pulled today by
15 this witness.

16 MS. BAHARANYI: For a date, your Honor, we are a
17 talking about also months after the activity would have taken
18 place.

19 THE COURT: I am sort of sorry that this wasn't raised
20 earlier today but I don't fault counsel for that but I think
21 it's not going to be a good idea to have a lengthy side bar
22 which is what I think we need to have to resolve this while the
23 jury sits there twiddling their thumbs.

24 So let me ask the government, we can either excuse the
25 jury now and then resolve this since we're sitting till 3:30

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1 today anyway and it's now 3:20, or you can go into something
2 else and then we'll come back to this, whichever you prefer.

3 MS. NICHOLAS: This is essentially the end of
4 government's direct.

5 THE COURT: I see. All right.

6 (Continued on next page)

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1 (In open court)

2 THE COURT: Ladies and gentlemen, I have bad news for
3 you. We are going to stop early today. I know you are
4 heartbroken but a little issue just came up that I've got to
5 resolve. It is going to take a fair amount of time and it's
6 silly for you to sit there while counsel and I work that out.
7 So we are going to end for today.

8 We're off to a good start now. One thing I wanted to
9 mention is really critical. If we are going to stay on
10 schedule, we need to start each morning promptly at 9:30 and
11 so, if I can ask you to sort of plan to be in the jury room by
12 9:15/9:20 because you may have heard that occasionally in the
13 great metropolis of New York, there are traffic delays and I
14 know you have you never encountered that in your life, but just
15 in case, and that way if you're all there at 9:20 we can start
16 at 9:30 without any delays.

17 So, have a very good evening and we'll see you
18 tomorrow at 9:30.

19 (Jury not present)

20 THE COURT: Please be seated.

21 All right. So you said the Government Exhibit 426.

22 MS. NICHOLAS: Your Honor, may I ask that the witness
23 step down?

24 THE COURT: Well, I thought we might need to keep her
25 to comment on some of the issues that are raised here. So, I

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1 think she needs to stay. I can't imagine that she would be
2 compromised in any way by remaining here. She might be bored
3 but that's a different story.

4 Okay. So, this is a document that was, regards a sale
5 number that was entered onto the system on December 16, 2020,
6 and its based on, appears to be on information furnished from R
7 & R to the AFT. The underlying information appears to be
8 ordinary business information, but let me hear more from first
9 the government and then from defense counsel as to what they
10 think is the reason this is not admissible or in the case of
11 the government, is admissible. So let me hear first from the
12 government.

13 MS. NICHOLAS: Yes, your Honor. So, essentially,
14 Government Exhibit 426 is a business record within a business
15 record, and I think the adoptive business record doctrine is
16 really the cornerstone here and the touchstone of that document
17 is reliability. Without looking at any other documents we know
18 there is a very strong -- have regulatory and statutory
19 obligation to report to the ATF every instance in which they'd
20 sell more than one gun of particular types within a particular
21 timeframe.

22 THE COURT: And they report that at or about the time
23 of the sale?

24 MS. NICHOLAS: They do, your Honor.

25 THE COURT: Okay.

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1 MS. NICHOLAS: That information is transmitted from
2 the FFL, the gun store to the ATF tracing center in West
3 Virginia. The ATF tracing center inputs that information every
4 time they receive it, not because they are planning for a
5 particular case. They receive the information. They create
6 the record.

7 That obligation and truthfulness from the FFL is how
8 we know this record is reliable. In this case we have and have
9 produced to defense counsel the underlying documents. We've
10 produced that 4473 filled out by the gun buyer at the time of
11 the purchase. We've produced the receipt from that purchase.
12 And we've produced the piece of paper the FFL fills out and
13 sends to the ATF from which the ATF types the records into this
14 document. This is a business record of the ATF from a database
15 accessed by this custodial witness.

16 THE COURT: Okay. So, let me hear from defense
17 counsel.

18 MS. BAHARANYI: Your Honor, I think reliability is a
19 good place to start. The touchstone is reliability and we're
20 talking about the reliability of records kept by a business
21 entity that is no longer in business. We heard from the
22 witness on the stand today that if there are FFL dealers who
23 don't properly keep their records, they are at risk of losing
24 their FFL license, their ability to sell firearms, their
25 ability to stay in business and we know for R & R no longer

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1 are.

2 So, I think to suggest that we should assume that they
3 kept their records in regularly conducted course of business
4 that we should assume that these records were trustworthy is
5 not supported by the facts that we do know from the witness who
6 took the stand here today.

7 THE COURT: I'm not sure I understand what you're
8 telling me about R & R. I mean to take a different example, if
9 a company goes out of business, that doesn't mean that its
10 business records are not admissible as business records. You
11 are saying there is reason to believe that R & R did not keep
12 accurate records and what's the basis for that?

13 MS. BAHARANYI: Well, your Honor, one factor is
14 certainly them going out of business.

15 THE COURT: No, no. I don't think that's a factor at
16 all. As I say, you know a company could go into bankruptcy.
17 It doesn't mean that its business records would be not qualify
18 for a business record exception to the hearsay rule.

19 MS. BAHARANYI: I think another reason we believe that
20 these records weren't regularly or properly kept is that we
21 don't actually have the record, the originals of the record.

22 THE COURT: What was it that defense counsel said she
23 just gave you?

24 MS. BAHARANYI: Well, the government said they sent us
25 records. In fact they sent us photos of certain records two

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1 days ago. Not any, nothing that we can authenticate, nothing
2 that seemed to actual come from R & R but photographs of
3 certain documents and records.

4 THE COURT: You think the government altered its
5 photographs of records in a devious attempt to confuse you as
6 to the accuracy?

7 MS. BAHARANYI: Your Honor, I think that there are now
8 multiple levels of potential unreliability here.

9 THE COURT: Let me ask the government, what was the
10 photographs that you so cleverly sent to defense counsel? What
11 were they photographs of?

12 MS. NICHOLAS: When an FFL goes out of business they
13 have statutory obligations to box up all the records and send
14 them to the National Tracing Center in West Virginia, which is
15 where those photographs came from yesterday afternoon. So we
16 actually do know that R & R complied with that program
17 regulation because they did and we have those records. Also,
18 if there is any speculation about why R & R publication went
19 out of business amidst the pandemic, it's speculation as to why
20 they are out of business.

21 (Continued on next page)
22
23
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1 MS. BAHARANYI: Your Honor, an additional point on
2 that. Turning back to Government Exhibit 426, which is these
3 multiple sale summaries they're seeking to admit. Of course to
4 fall properly under a business record exception, the records
5 need to be regularly conducted and recorded close in time to
6 whatever activity they're purporting to represent.

7 Here we have a sale that took place on October 31st.
8 That's the underlying firearm sale -- of 2020. These record
9 was entered -- since that's all the information we have. It
10 says entered December 6, 2020. That's a month and a half
11 later. This is far from a recording that's happening in time
12 or close in time to the transaction or activity.

13 THE COURT: Does someone have a copy of what was sent
14 to you a couple of days ago, the underlying record?

15 MS. NICHOLAS: We do, your Honor.

16 THE COURT: May I take a look at those.

17 MS. BAHARANYI: Your Honor, I'd just add for the other
18 purchases that have been brought up or raised today in the
19 government's case, we have the original 4473 forms. This is
20 interesting and frankly raises the questions of reliability
21 because we don't have any sort of original form or copy, unlike
22 in every other instance the government has sought to prove
23 today.

24 THE COURT: So the items that the government has just
25 handed up which are marked as Government's Exhibits 423, 424

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1 and 425 appear on their face to be business records of R&R that
2 were entered on October 31st of 2020, and I will forego any bad
3 jokes about buying a gun on Halloween Eve. But in any event,
4 on their face they all appear to be classic ordinary business
5 records. And so they were then sent -- or I should say the
6 information was sent later on. The records were sent when R&R
7 went out of business as I understand it.

8 MS. NICHOLAS: Close in time.

9 THE COURT: But the information required to be sent to
10 the Bureau of Alcohol Tobacco and Firearms National Tracing
11 Center was sent on December 16, 2020. I don't think that delay
12 in any way detracts from the ordinary business nature of the
13 underlying records that are accurately recorded then on what
14 was sent to ATF.

15 So I thank defense counsel for raising this
16 interesting issue, but the objections are overruled, and 426
17 will be received.

18 (Government's Exhibit 426 received in evidence)

19 THE COURT: Anything else that we need to raise before
20 we start the *Daubert* hearing of the other witness?

21 MS. SMYSER: I want to note for the Court that
22 Mr. Petersohn had a hard stop at 4:30, but his municipal
23 hearing while we've been in court today that was supposed to
24 take place this evening has been canceled. In the event we
25 need to go a little bit longer, that's fine with the witness.

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1 THE COURT: Thank you. However, I have another matter
2 at 4:00, and I don't think it's going to take more than a half
3 hour. Thank you so much we'll see you tomorrow.

4 (Witness excused)

5 (Recess)

6 THE COURT: Are you agreeable to starting without your
7 client since this is just a question --

8 MS. BAHARANYI: We can proceed.

9 THE COURT: Okay. Very good. Thank you. First just
10 before I forget, it use to be the case that after an expert
11 testified -- excuse me, after an expert gave his or her
12 qualifications, the party calling the expert would then move to
13 have the court certify them as an expert. The Second Circuit a
14 long time ago said don't do that in front of the jury.
15 Government counsel with the previous witness really didn't do
16 it because you only referred to the rule so the jury had no
17 idea what you were asking for, but still it's better to do that
18 at the sidebar not in front of the jury.

19 However, as I understand, there's no challenge to this
20 particular witness's qualifications. The challenge is to the
21 substance of what he has to say. So let's swear him in.

22 Please rise.

23 (Witness sworn)

24 THE COURT: State your name for the record.

25 THE WITNESS: My name is Andrew Petersohn,

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1 P-E-T-E-R-S-O-H-N.

2 THE COURT: Let me see if I can cut this short subject
3 to hearing whatever either counsel wants to add, and I'll note
4 for the record that the defendant is now back. From prior
5 proceedings involving cell tower matters, I have long since
6 concluded that they, if properly qualified through making the
7 jury aware of certain limitations qualify and pass the *Daubert*
8 standard. So I have sometimes excluded witnesses who didn't
9 have the personal technical knowledge -- that's not true of
10 this witness -- but it was always fun to exclude a government
11 employee.

12 My concern -- and it goes to both his direct testimony
13 and to the charts that he intends to use is that the jury be
14 made aware immediately without waiting for cross-examination of
15 the limitations on cell tower evidence as indicating the
16 location of the underlying phone and person. These include
17 that the signal doesn't always go to the closest tower and
18 often goes not even to the second closest tower. And
19 furthermore, that that can be affected by things like whether,
20 if it's an urban neighborhood or rural neighborhood, and so
21 forth.

22 But when I went back over the weekend and looked at
23 the government's response to the motion to preclude the
24 testimony of Mr. Petersohn, it appeared that all that was going
25 to be brought out on his direct testimony. Is that right?

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1 MS. SMYSER: Yes, your Honor.

2 THE COURT: So that satisfies, to be frank, what was
3 the main reason why I thought we needed this hearing. Now with
4 respect to the charts which are the attached to the
5 defendant's -- this was a belated motion on the part of the
6 defense. I don't fault them for that, but they added this in
7 their opposition to the government's motions *in limine*, and
8 then there was a further response from the government. But
9 there are, in addition to again stuff like photographs of cell
10 sites and the like, there are several charts indicating cell
11 site location utilized by Keith Vereen's device on September
12 14th, 2020. There's first an indication that he traveled from
13 South Carolina to the New York area. Then there's a chart
14 showing the cell site location utilized by Keith Vereen's
15 device and the Steve Perez device on September 14, 2020 from
16 8:10 p.m. to 8:25 p.m. And I'm not quite sure what the shaded
17 areas there are intended to show. Maybe someone can put a copy
18 of the chart up before the witness.

19 MS. SMYSER: Can you display Government Exhibit 801.
20 I can also give him a hard copy.

21 THE COURT: It's not appearing yet on my screen.
22 What's the shaded area suppose to show?

23 THE WITNESS: So the shaded area is only meant to show
24 the direction of the signals transmitted by the particular
25 sector of that particular cell site, and there's some

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1 background as to what exactly the icon means. In one of the
2 preceding slides that speaks more generally about how the
3 software tool displays the call records that we will have gone
4 through with the jury prior to looking at this. So they should
5 have a good sense when this comes up as to what that icon means
6 as far as the direction of the energy emanating from that cell
7 site.

8 THE COURT: Well, I hear what you say, but I don't
9 understand it. Meaning, let's look at the one I was just
10 referring to which is -- well, go back to your general one. I
11 think this is a chart that you labeled displaying cell site
12 sector and azimuth. What's azimuth?

13 THE WITNESS: Azimuth is the direction of the main
14 beam of the antenna where the maximum energy is focused.

15 THE COURT: All right. So what? What's the
16 relevance?

17 THE WITNESS: The icon displays the direction that the
18 sector of that cell site faces, which would give the viewer a
19 sense of the direction that the device was relative to the cell
20 site when the connection was made. The shaded area is not
21 meant to represent the coverage area, and there'll be some
22 testimony on the slide that's on the display now to that
23 effect.

24 THE COURT: That's very helpful, the last part you
25 said, but I'm not understanding what the relevance then is. If

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1 it's not designed to show the coverage, what's the relevance of
2 the direction?

3 THE WITNESS: If we know that the energy from that
4 sector in the case of the slide that's being displayed is
5 pointed generally southeast, then the likelihood is that the
6 device used to make this connection is on the southeast side of
7 the facility when the connection was made. Based on that
8 information as well as the general cell density in a given
9 area, we can have a sense of the distance that the user was
10 from the facility as well as the direction, of course not a
11 precise location, but I can give some likely ranges.

12 THE COURT: I'm just looking at your chart entitled
13 cell site location utilized by Keith Vereen's device and Steven
14 Perez's device 9/14/2020 to 8:15 p.m. to 8:25 p.m. Do you have
15 that in front of you?

16 THE WITNESS: I do.

17 THE COURT: What are the shaded areas intended to
18 show?

19 THE WITNESS: So there are red and green concentric
20 shaded areas there. The only reason they have different
21 sizes -- and we will go through this on direct -- is just for
22 display purposes. That way they're not completely overlapping,
23 and we can't tell that they are distinct green and red shapes
24 indicating connections by the Vereen device and the Perez
25 device to the same sector of the same cell site. The icon also

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1 shows --

2 THE COURT: That's fine, but that's not an answer to
3 my question. What is the relevance of any of these shaded
4 areas to any issue in this case?

5 THE WITNESS: Well, the shaded areas indicate that a
6 cellular device connected to the cell site that is located at
7 the intersection of the edge defining boundaries of the
8 semi-circles; and that more specifically the sector or set of
9 antennas that serve that call pointed generally southeast down
10 the East Gun Hill Road corridor.

11 THE COURT: So, once again I'm not following what
12 you're saying. The direction as I take it shown by the arrows,
13 yes or no?

14 THE WITNESS: The arrows only --

15 THE COURT: Are just to connect the device to the
16 shaded area?

17 THE WITNESS: Yeah, just to connect -- let's say if we
18 look at the first top left caption box that there was an 8:20
19 p.m. voice call that the Perez device was involved in and that
20 it utilized that red shaded sector that the arrow points to.

21 THE COURT: Okay. I don't have a color copy which is
22 the red and which is the green in your color copy?

23 THE WITNESS: The red is smaller of the two concentric
24 semi-circles.

25 THE COURT: So you're saying that from the data that

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1 you used to prepare this chart that the device had to be within
2 at least the green area and maybe more likely the red area. Is
3 that what you're saying?

4 THE WITNESS: No. The data only indicates that the
5 device utilized that sector that is located on the rooftop
6 there at the intersection of East Gun Hill Road and the north
7 south cross street there which is Bainbridge.

8 THE COURT: Again, I'm just a dumb judge. I don't
9 understand a word you're saying. Maybe counsel wants to
10 intervene here. What do you say is the relevance of any of
11 this?

12 MS. SMYSER: Your Honor, I think it might be helpful
13 to take a step back. At this point in Mr. Petersohn's
14 testimony, we will have him explain the basics of cell sites,
15 what cell sites are, and he will explain that there are
16 multiple sectors on a cell site, particularly generally three.
17 So when you connect to a cell site, you connect to one of those
18 sectors which has antennas and waves that generate in a
19 particular direction.

20 So Mr. Petersohn will have explained that this shading
21 at this point -- before we even get to his particular map,
22 simply indicates the sector and the direction that those waves
23 were facing and we will have questions.

24 THE COURT: I thought the whole object of this --
25 maybe I misunderstand what you're getting at -- was to show

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1 that Mr. X was located or at least his phone was located in a
2 certain area at a certain time.

3 MS. SMYSER: Yes, that is part of what we are trying
4 to show.

5 THE COURT: Isn't that all that you're trying to show?

6 MS. SMYSER: I think it is also important in this case
7 that these particular phones connect to the same sector, rather
8 than the inference here is that they're meeting. They are in
9 the same spot.

10 THE COURT: They could be meeting even if they weren't
11 in the same sector if they're, for example -- that's why I
12 think it's one thing the earlier chart which shows the moving
13 from South Carolina to the New York area doesn't much matter
14 whether it was connecting to the first cell site or the second
15 cell site or the third cell site because it's such a huge
16 change from one location to another.

17 Here what you're trying to do, if I understand it, is
18 corroborate that they met for the exchange of guns or whatever.

19 MS. SMYSER: Yes.

20 THE COURT: So are you saying through these charts
21 anything more than they were in the general same vicinity?

22 MS. SMYSER: That's what we're saying and that is what
23 Mr. Petersohn will testify is his conclusion based on his
24 review of the data, that they were in the same general vicinity
25 at the time and will explore the limitations of that as he's

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1 testifying.

2 THE COURT: So let me ask defense counsel. What
3 questions do you want to put or what arguments you want to
4 make.

5 MS. BAHARANYI: Quite a few, your Honor. I think we
6 can start where we are now and work backwards. I think part of
7 the confusion that the Court rightfully has in my opinion and
8 that I've had is these circles and the shading makes it look as
9 those these devices are overlapping in the same place at the
10 same time. When in fact the shading does not have anything to
11 do with location, but that is certainly what it seems to
12 suggest. And I don't think no amount of qualifications is
13 going to take away from the visual representation of these two
14 devices in the same place at the same time, despite the fact
15 that the data cannot tell us that. One of the later objections
16 --

17 THE COURT: I think there are two objections there.
18 One, I don't understand that the witness will be saying that
19 they're in the same place at the same time. What he's going to
20 say is they're going to be in the same vicinity at the same
21 time, and so I think that's permissible.

22 Whether the chart suggest something more is a separate
23 point which I think has some force. If all he's saying is
24 they're in the same vicinity, we know going back to the very
25 first chart, you're not suggesting, are you, that Mr. Vereen

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1 was still in South Carolina when his phone is connecting to a
2 cell tower in Newark?

3 MS. BAHARANYI: I'm not making that suggestion, your
4 Honor. I think on point number one since we're talking about
5 it, the witness's ability to say that certain devices are even
6 near -- certain devices are even in the vicinity of these cell
7 site towers, I think is in fact not supported by the data and
8 data itself that is not reliable.

9 So as we raised in our motion, the witness would be
10 relying on these call detail records that have certain cell
11 site location information. Perhaps I could ask him, but I
12 think he would not disagree that he did not collect these call
13 detail records. He has not reviewed them for any errors, nor
14 has he corroborated that there were in fact cell towers at that
15 particular time on that particular date.

16 I think he'd also have to recognize that for this cell
17 site location information there have been errors in the past,
18 so there's this deep sense of unreliability for the records
19 he's relying on and then analyzing. He's adding his analysis
20 on top of these unreliable records, and his analysis is based
21 off of how he views cell site towers is usually working. And I
22 understand his analysis is also based on drive test that he
23 sometimes made, but he has not made in this case. He's not
24 conducted a drive test your Honor that could help you test
25 whether a particular phone is connecting to a particular tower.

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1 He has not conducted that in this area that's going to be shown
2 to the jury or in any other area in the Bronx borough, so I
3 think his ability to take unreliable data then add his analysis
4 on top of it --

5 THE COURT: I'm not sure why you say the data is
6 unreliable.

7 MS. BAHARANYI: Because the data he's going to rely on
8 are these call details records created by cellular companies,
9 and there's no error rate whatsoever for these call detail
10 records. Meaning, he does not know if -- he does not know, the
11 witness does not know if these are in fact accurate reliable
12 records.

13 THE COURT: So this I've gone through in previous
14 *Daubert* hearings. The fact that there is not a specific error
15 rate calculated is a factor the Court considers under *Daubert*,
16 but it's hardly definitive. And the logic of how these operate
17 suggests -- if a call is connected, it's connected with some
18 tower somewhere, and it's not a tower in Timbuktu. It's a
19 tower somewhere in the vicinity. He needs to say on his
20 direct -- and I gather the government will have him say that
21 it's not always the closest tower. It's not even necessarily
22 the second closest tower, but it's a tower in the general area.

23 MS. BAHARANYI: What are the boundaries of that? My
24 understanding from the 3500 the government recently produced
25 maybe as of this weekend that they may be seeking to elicit

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1 testimony from this witness that Mr. Lucha's device being on
2 one location on Perry Avenue wouldn't allow him -- excuse me.
3 Let me make sure I'm saying this clearly. His device located
4 at 3318 Perry Avenue where he lives would not allow him to use
5 a tower that is a few blocks away. This is a new subject area
6 testimony, one that hasn't been previewed to us, and we don't
7 know the basis of those conclusions. We don't know what he's
8 going to say in terms of what area can be covered by what
9 particular sectors, and that's why it's necessary to have.
10 What we do know is that he's basing his analysis on data that
11 we can't corroborate, on methodologies that we can't
12 corroborate, and he's giving us conclusions for which we don't
13 know the exact parameters.

14 THE COURT: That's interesting, but I'm still not --
15 let me go back to the government. Is the relevance of this
16 simply to show that, for example, two guys, one of whom use to
17 be located in South Carolina were in the same general vicinity
18 in the Bronx or whatever on a certain date at approximately the
19 same time. That seems to me to fall within his expertise. But
20 if you're saying something much more precise than that, then I
21 think defense counsel's points have some force.

22 MS. SMYSER: We're not saying something more precise
23 than that, your Honor.

24 THE COURT: So then my only question then is whether
25 these charts suggest something more precise than what you just

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1 said is all you're trying to establish. So tell me again
2 what's the difference between what at least on my screen is a
3 sort of insipid green and probably base described as magenta,
4 but what's the difference between them?

5 MS. SMYER: Your Honor, the shadings, both the
6 magenta and the green indicate that the Perez device, the
7 magenta, connected to this particular sector of this cell site
8 as did the Keith Vereen device, the green device, connected to
9 this particular sector of this cell site. It is not purported
10 to say that those devices are within the shaded area, and we
11 will bring that out with Mr. Petersohn before he even testifies
12 about this particular map. They show the direction that the
13 sector faces.

14 MS. BAHARANYI: Your Honor, maintaining our first
15 objection, but I think I understand where the Court is going.
16 Shaded areas are certainly not necessary to show direction of
17 coverage. I think what unfortunately it's going to lead the
18 jury to believe is that they are in this particular area.

19 THE COURT: I think that's problem, while she has
20 fully preserved all the points made in her papers, and here in
21 argument that my focus is much more on whether the charts
22 themselves are misleading, not because of what the witness will
23 say about them, but just because on their face they suggest
24 more precision than even his testimony will support. So let's
25 continue to focus there. So why do you need these charts?

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1 MS. SMYSER: Your Honor, I think these charts are key
2 to understanding the data. It would be extremely I think
3 difficult for the jury to follow were these charts not there as
4 an aid to walk through these call detail records and when each
5 device is connecting to a particular cell site. I mean even if
6 we took away the shading, you still need to be able to say and
7 to show to the jury that these two devices connected to a
8 particular cell site at a particular time. And Mr. Petersohn
9 is called out --

10 THE COURT: Looking at the one that's in front of me.
11 Okay. So what the jury is seeing is a box that says Steven
12 Perez device voice record 8:20 p.m. and that's pointing to the
13 magenta shaded area, yes.

14 MS. SMYSER: Yes, your Honor.

15 THE COURT: And then we have the Keith Vereen device
16 at 8:13 calling the Perez device and at 8:21 it is located
17 within the green shaded area, right.

18 MS. SMYSER: Not that it is located within the green
19 shaded area, that the Keith Vereen device is connecting to that
20 sector of that particular cell site, the same one that the
21 Perez device is connecting to at 8:20 p.m.

22 THE COURT: The relevance of all that is with all the
23 qualification the jury can infer that it's more likely than not
24 that they are in the same area?

25 MS. SMYSER: Absolutely, yes.

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1 THE COURT: I think if the charts are to come in at
2 all they need to be reworded maybe by along the lines you were
3 just saying, this shows what tower or area of towers they were
4 connected to.

5 MS. SMYSER: Your Honor, we do plan to have that
6 testimony, and I think it's key though to have a visual
7 representation of the particular sector because that indicates
8 what area you are in. You're on the far western side. You're
9 probably not going to connect to the sector on the eastern side
10 of that cell tower. There's some overlaps. Some things can
11 happen. We'll bring that out, but the repeated connection to a
12 particular sector helps indicate the location, and so I think
13 that we have to have some visual indication of the various
14 sectors. Here, they're not only connecting to the same cell
15 site, they're connecting to the same sector that serves that
16 general area.

17 MS. BAHARANYI: Your Honor, the visual representation
18 here, I understand they want something to visually go along
19 with their witness's testimony, but that thing can't be
20 misleading. I think as the conversation has revealed today
21 just over the past 20 minutes is just how confusing and
22 misleading the shading is.

23 The shading does not mean, and in fact cannot mean
24 that they were in this area at the same time. He can't say
25 they were here, there, a block or two away from the shaded

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1 area, and yet that's certainly what it suggest to a jury.

2 THE COURT: I think I will dwell on this some more
3 tonight because there's no sense watching a Yankee's game
4 because they always lose, but the government may want to
5 consider redoing these charts. I'm not requiring you to. I
6 may accept them. I may not. At least it seems to me that
7 defense counsel has a good point that the nuances that attach
8 to these charts which will be made verbally maybe in the charts
9 themselves show that the jury does not reach an unfair
10 conclusion.

11 MS. SMYER: Your Honor, one idea. I think part of
12 the problem is this is how it is represented with the software,
13 and we could ask Mr. Petersohn that we could include a textual
14 disclaimer on each side along the lines.

15 THE COURT: That certainly would be a move in the
16 right direction.

17 MS. SMYER: We would be happy to do that.

18 THE COURT: Very good.

19 MS. BAHARANYI: On that note though, again it does not
20 take away what the jury is looking at and what they're seeing.

21 THE COURT: Now you're assuming the jury can't read
22 simple English. If there's a disclaimer that says, this is
23 what we're showing. This is not, and we're not showing X.
24 We're 'showing Y.

25 MS. BAHARANYI: One way for them to proceed in a less

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1 misleading and prejudicial manner is to place the dot where the
2 sector is, use an arrow to show direction. That's all that he
3 would be testifying to.

4 MS. SMYSER: Your Honor, I think just using an arrow
5 could potentially be more prejudicial.

6 THE COURT: I agree. It's an interesting suggestion,
7 but I actually think that is potentially more prejudicial. I
8 like the disclaimer idea. I'm not making any final ruling.
9 I'll think about this all night and see what synonyms there are
10 for magenta. And why don't I invite all of you to come in at
11 9:00 tomorrow and we'll continue this discussion then with the
12 new charts with the disclaimer. Okay. Very good. I'll see
13 you tomorrow at 9:00.

14 (Adjourned to August 29, 2023 at 9:00 a.m.)
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LENNAE GORDON

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GOVERNMENT EXHIBITS

Exhibit No.	Received
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20436

20238

202AT, 205T39

205A, 205B and 205C43

20346

520A, 520B, 520C, 521A, 522A, 522B49

521, 52252

52053

1006, 60766

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1004, 411 - 422 and 43079

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